

**INSURANCE AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill modifies provisions related to insurance.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides that the Title and Escrow Commission shall meet at least quarterly, rather than monthly;
- ▶ enacts provisions that require a group-wide supervisor for each internationally active insurance group;
- ▶ enacts the Corporate Governance Annual Disclosure Act, which:
  - requires each insurer or insurance group to submit a disclosure document to the Insurance Commissioner that describes the entity's corporate governance structure, policies, and practices;
  - provides that a corporate governance annual disclosure and certain related records are confidential and classified as protected for purposes of the Government Records Access and Management Act;
  - allows the insurance commissioner to hire one or more third-party consultants to review a corporate governance annual disclosure; and
  - provides a penalty for an insurer or insurance group that fails to timely submit a corporate governance annual disclosure;
- ▶ modifies the eligibility requirements for the small company exemption from the generally applicable requirements for reserves;
- ▶ provides that an endorsement to a policy must include the insurer's name and state of domicile;
- ▶ provides a deadline by which an insurer issuing certain types of policies must deliver a policy to the policyholder or a certificate to each member of the insured group;

- 33 ▶ allows for an action against an insurer after a denial of payment;
- 34 ▶ provides certain conditions and disclosure requirements for a short-term limited
- 35 duration policy insurance policy that includes a preexisting condition exclusion;
- 36 ▶ clarifies that an employee may, under certain circumstances, extend coverage under
- 37 an employer's group policy;
- 38 ▶ provides that the commissioner may take action against a navigator licensee or
- 39 applicant, a third-party administrator licensee or applicant, or an insurance adjuster
- 40 licensee or applicant, who:
- 41 • is convicted of a misdemeanor involving fraud, misrepresentation, theft, or
- 42 dishonesty; or
- 43 • has had a professional or occupational license or registration denied, suspended,
- 44 revoked, or surrendered to resolve an administrative action;
- 45 ▶ enacts provisions related to an indemnitor's duty to indemnify an insolvent insurer;
- 46 ▶ modifies the conduct that constitutes a fraudulent insurance act under the Insurance
- 47 Code and the Utah Criminal Code;
- 48 ▶ clarifies that the Insurance Department may investigate and enforce certain
- 49 provisions of the Workers' Compensation Act;
- 50 ▶ clarifies the process by which the Insurance Commissioner reviews and acts upon
- 51 an application for a bail bond agency license;
- 52 ▶ consolidates certain provisions governing captive insurance companies;
- 53 ▶ establishes a certificate of dormancy for eligible captive insurance companies;
- 54 ▶ requires a new or renamed captive insurance company to include the word
- 55 "insurance" or an equivalent term in its name;
- 56 ▶ requires two individuals to verify a captive insurance company's report of financial
- 57 condition;
- 58 ▶ requires a captive insurance company to report certain changes to its financial
- 59 condition to the Insurance Commissioner; and
- 60 ▶ makes technical and conforming changes.

61 **Money Appropriated in this Bill:**

62 None

63 **Other Special Clauses:**

64 This bill provides a special effective date.

65 **Utah Code Sections Affected:**

66 AMENDS:

- 67 **31A-1-301**, as last amended by Laws of Utah 2018, Chapter 319  
68 **31A-2-403**, as last amended by Laws of Utah 2018, Chapter 319  
69 **31A-16-109**, as last amended by Laws of Utah 2016, Chapter 163  
70 **31A-17-519**, as enacted by Laws of Utah 2016, Chapter 163  
71 **31A-21-201**, as last amended by Laws of Utah 2010, Chapter 10  
72 **31A-21-311**, as last amended by Laws of Utah 2003, Chapter 252  
73 **31A-21-313**, as last amended by Laws of Utah 2015, Chapter 244  
74 **31A-22-501**, as last amended by Laws of Utah 2005, Chapter 125  
75 **31A-22-605.1**, as enacted by Laws of Utah 2005, Chapter 78  
76 **31A-22-611**, as last amended by Laws of Utah 2011, Chapters 297 and 366  
77 **31A-22-627**, as last amended by Laws of Utah 2017, Chapter 292  
78 **31A-22-638**, as enacted by Laws of Utah 2010, Chapter 360  
79 **31A-22-701**, as last amended by Laws of Utah 2018, Chapter 319  
80 **31A-22-722**, as last amended by Laws of Utah 2018, Chapter 319  
81 **31A-22-726**, as last amended by Laws of Utah 2015, Chapter 283  
82 **31A-23a-111**, as last amended by Laws of Utah 2018, Chapter 319  
83 **31A-23a-402**, as last amended by Laws of Utah 2017, Chapter 292  
84 **31A-23a-411.1**, as enacted by Laws of Utah 2003, Chapter 252  
85 **31A-23a-415**, as last amended by Laws of Utah 2015, Chapters 312 and 330  
86 **31A-23b-401**, as last amended by Laws of Utah 2017, Chapter 168  
87 **31A-25-208**, as last amended by Laws of Utah 2016, Chapter 138  
88 **31A-26-213**, as last amended by Laws of Utah 2017, Chapter 168  
89 **31A-30-103**, as last amended by Laws of Utah 2014, Chapters 290, 300, and 425  
90 **31A-30-118**, as enacted by Laws of Utah 2014, Chapter 425  
91 **31A-31-103**, as last amended by Laws of Utah 2004, Chapter 104  
92 **31A-31-107**, as last amended by Laws of Utah 1997, Chapter 375  
93 **31A-35-405**, as last amended by Laws of Utah 2016, Chapter 234

- 94           **31A-37-102**, as last amended by Laws of Utah 2017, Chapter 168  
95           **31A-37-103**, as last amended by Laws of Utah 2016, Chapter 138  
96           **31A-37-106**, as last amended by Laws of Utah 2017, Chapter 168  
97           **31A-37-201**, as enacted by Laws of Utah 2003, Chapter 251  
98           **31A-37-203**, as enacted by Laws of Utah 2003, Chapter 251  
99           **31A-37-301**, as last amended by Laws of Utah 2017, Chapter 168  
100          **31A-37-401**, as last amended by Laws of Utah 2015, Chapter 244  
101          **31A-37-501**, as last amended by Laws of Utah 2016, Chapter 138  
102          **31A-37-502**, as last amended by Laws of Utah 2016, Chapters 138 and 348  
103          **31A-45-102**, as enacted by Laws of Utah 2017, Chapter 292  
104          **31A-45-303**, as last amended by Laws of Utah 2017, Chapter 168 and renumbered and  
105             amended by Laws of Utah 2017, Chapter 292  
106          **31A-45-401**, as renumbered and amended by Laws of Utah 2017, Chapter 292  
107          **34A-2-110**, as last amended by Laws of Utah 2011, Chapters 328 and 413  
108          **63G-2-305**, as last amended by Laws of Utah 2018, Chapters 81, 159, 285, 315, 316,  
109             319, 352, 409, and 425  
110          **76-6-521**, as last amended by Laws of Utah 2004, Chapter 104

## 111 ENACTS:

- 112          **31A-16-108.6**, Utah Code Annotated 1953  
113          **31A-16b-101**, Utah Code Annotated 1953  
114          **31A-16b-102**, Utah Code Annotated 1953  
115          **31A-16b-103**, Utah Code Annotated 1953  
116          **31A-16b-104**, Utah Code Annotated 1953  
117          **31A-16b-105**, Utah Code Annotated 1953  
118          **31A-16b-106**, Utah Code Annotated 1953  
119          **31A-16b-107**, Utah Code Annotated 1953  
120          **31A-16b-108**, Utah Code Annotated 1953  
121          **31A-27a-512.1**, Utah Code Annotated 1953  
122          **31A-37-701**, Utah Code Annotated 1953  
123          **31A-37-702**, Utah Code Annotated 1953

## 124 REPEALS AND REENACTS:

125           **31A-37-202**, as last amended by Laws of Utah 2017, Chapter 168

126 REPEALS:

127           **31A-16a-102**, as enacted by Laws of Utah 2017, Chapter 168

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129 *Be it enacted by the Legislature of the state of Utah:*

130           Section 1. Section **31A-1-301** is amended to read:

131           **31A-1-301. Definitions.**

132           As used in this title, unless otherwise specified:

133           (1) (a) "Accident and health insurance" means insurance to provide protection against  
134 economic losses resulting from:

135           (i) a medical condition including:

136           (A) a medical care expense; or

137           (B) the risk of disability;

138           (ii) accident; or

139           (iii) sickness.

140           (b) "Accident and health insurance":

141           (i) includes a contract with disability contingencies including:

142           (A) an income replacement contract;

143           (B) a health care contract;

144           (C) an expense reimbursement contract;

145           (D) a credit accident and health contract;

146           (E) a continuing care contract; and

147           (F) a long-term care contract; and

148           (ii) may provide:

149           (A) hospital coverage;

150           (B) surgical coverage;

151           (C) medical coverage;

152           (D) loss of income coverage;

153           (E) prescription drug coverage;

154           (F) dental coverage; or

155           (G) vision coverage.

156 (c) "Accident and health insurance" does not include workers' compensation insurance.

157 (d) For purposes of a national licensing registry, "accident and health insurance" is the  
158 same as "accident and health or sickness insurance."

159 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title  
160 63G, Chapter 3, Utah Administrative Rulemaking Act.

161 (3) "Administrator" means the same as that term is defined in Subsection [(171)] (178).

162 (4) "Adult" means an individual who has attained the age of at least 18 years.

163 (5) "Affiliate" means a person who controls, is controlled by, or is under common  
164 control with, another person. A corporation is an affiliate of another corporation, regardless of  
165 ownership, if substantially the same group of individuals manage the corporations.

166 (6) "Agency" means:

167 (a) a person other than an individual, including a sole proprietorship by which an  
168 individual does business under an assumed name; and

169 (b) an insurance organization licensed or required to be licensed under Section  
170 31A-23a-301, 31A-25-207, or 31A-26-209.

171 (7) "Alien insurer" means an insurer domiciled outside the United States.

172 (8) "Amendment" means an endorsement to an insurance policy or certificate.

173 (9) "Annuity" means an agreement to make periodical payments for a period certain or  
174 over the lifetime of one or more individuals if the making or continuance of all or some of the  
175 series of the payments, or the amount of the payment, is dependent upon the continuance of  
176 human life.

177 (10) "Application" means a document:

178 (a) (i) completed by an applicant to provide information about the risk to be insured;

179 and

180 (ii) that contains information that is used by the insurer to evaluate risk and decide  
181 whether to:

182 (A) insure the risk under:

183 (I) the coverage as originally offered; or

184 (II) a modification of the coverage as originally offered; or

185 (B) decline to insure the risk; or

186 (b) used by the insurer to gather information from the applicant before issuance of an

187 annuity contract.

188 (11) "Articles" or "articles of incorporation" means:

189 (a) the original articles;

190 (b) a special law;

191 (c) a charter;

192 (d) an amendment;

193 (e) restated articles;

194 (f) articles of merger or consolidation;

195 (g) a trust instrument;

196 (h) another constitutive document for a trust or other entity that is not a corporation;

197 and

198 (i) an amendment to an item listed in Subsections (11)(a) through (h).

199 (12) "Bail bond insurance" means a guarantee that a person will attend court when

200 required, up to and including surrender of the person in execution of a sentence imposed under

201 Subsection 77-20-7(1), as a condition to the release of that person from confinement.

202 (13) "Binder" means the same as that term is defined in Section 31A-21-102.

203 (14) "Blanket insurance policy" means a group policy covering a defined class of

204 persons:

205 (a) without individual underwriting or application; and

206 (b) that is determined by definition without designating each person covered.

207 (15) "Board," "board of trustees," or "board of directors" means the group of persons

208 with responsibility over, or management of, a corporation, however designated.

209 (16) "Bona fide office" means a physical office in this state:

210 (a) that is open to the public;

211 (b) that is staffed during regular business hours on regular business days; and

212 (c) at which the public may appear in person to obtain services.

213 (17) "Business entity" means:

214 (a) a corporation;

215 (b) an association;

216 (c) a partnership;

217 (d) a limited liability company;

218 (e) a limited liability partnership; or

219 (f) another legal entity.

220 (18) "Business of insurance" means the same as that term is defined in Subsection  
221 [~~92~~] 94.

222 (19) "Business plan" means the information required to be supplied to the  
223 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required  
224 when these subsections apply by reference under:

225 (a) Section 31A-7-201;

226 (b) Section 31A-8-205; or

227 (c) Subsection 31A-9-205(2).

228 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a  
229 corporation's affairs, however designated.

230 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a  
231 corporation.

232 (21) "Captive insurance company" means:

233 (a) an insurer:

234 (i) owned by another organization; and

235 (ii) whose exclusive purpose is to insure risks of the parent organization and an  
236 affiliated company; or

237 (b) in the case of a group or association, an insurer:

238 (i) owned by the insureds; and

239 (ii) whose exclusive purpose is to insure risks of:

240 (A) a member organization;

241 (B) a group member; or

242 (C) an affiliate of:

243 (I) a member organization; or

244 (II) a group member.

245 (22) "Casualty insurance" means liability insurance.

246 (23) "Certificate" means evidence of insurance given to:

247 (a) an insured under a group insurance policy; or

248 (b) a third party.

249 (24) "Certificate of authority" is included within the term "license."

250 (25) "Claim," unless the context otherwise requires, means a request or demand on an  
251 insurer for payment of a benefit according to the terms of an insurance policy.

252 (26) "Claims-made coverage" means an insurance contract or provision limiting  
253 coverage under a policy insuring against legal liability to claims that are first made against the  
254 insured while the policy is in force.

255 (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance  
256 commissioner.

257 (b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent  
258 supervisory official of another jurisdiction.

259 (28) (a) "Continuing care insurance" means insurance that:

260 (i) provides board and lodging;

261 (ii) provides one or more of the following:

262 (A) a personal service;

263 (B) a nursing service;

264 (C) a medical service; or

265 (D) any other health-related service; and

266 (iii) provides the coverage described in this Subsection (28)(a) under an agreement  
267 effective:

268 (A) for the life of the insured; or

269 (B) for a period in excess of one year.

270 (b) Insurance is continuing care insurance regardless of whether or not the board and  
271 lodging are provided at the same location as a service described in Subsection (28)(a)(ii).

272 (29) (a) "Control," "controlling," "controlled," or "under common control" means the  
273 direct or indirect possession of the power to direct or cause the direction of the management  
274 and policies of a person. This control may be:

275 (i) by contract;

276 (ii) by common management;

277 (iii) through the ownership of voting securities; or

278 (iv) by a means other than those described in Subsections (29)(a)(i) through (iii).

279 (b) There is no presumption that an individual holding an official position with another

280 person controls that person solely by reason of the position.

281 (c) A person having a contract or arrangement giving control is considered to have  
282 control despite the illegality or invalidity of the contract or arrangement.

283 (d) There is a rebuttable presumption of control in a person who directly or indirectly  
284 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the  
285 voting securities of another person.

286 (30) "Controlled insurer" means a licensed insurer that is either directly or indirectly  
287 controlled by a producer.

288 (31) "Controlling person" means a person that directly or indirectly has the power to  
289 direct or cause to be directed, the management, control, or activities of a reinsurance  
290 intermediary.

291 (32) "Controlling producer" means a producer who directly or indirectly controls an  
292 insurer.

293 (33) "Corporate governance annual disclosure" means a report an insurer or insurance  
294 group files in accordance with the requirements of Chapter 16b, Corporate Governance Annual  
295 Disclosure Act.

296 [~~(33)~~] (34) (a) "Corporation" means an insurance corporation, except when referring to:

297 (i) a corporation doing business:

298 (A) as:

299 (I) an insurance producer;

300 (II) a surplus lines producer;

301 (III) a limited line producer;

302 (IV) a consultant;

303 (V) a managing general agent;

304 (VI) a reinsurance intermediary;

305 (VII) a third party administrator; or

306 (VIII) an adjuster; and

307 (B) under:

308 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and

309 Reinsurance Intermediaries;

310 (II) Chapter 25, Third Party Administrators; or

- 311 (III) Chapter 26, Insurance Adjusters; or
- 312 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
- 313 Holding Companies.
- 314 (b) "Mutual" or "mutual corporation" means a mutual insurance corporation.
- 315 (c) "Stock corporation" means a stock insurance corporation.
- 316 [~~34~~] (35) (a) "Creditable coverage" has the same meaning as provided in federal
- 317 regulations adopted pursuant to the Health Insurance Portability and Accountability Act.
- 318 (b) "Creditable coverage" includes coverage that is offered through a public health plan
- 319 such as:
- 320 (i) the Primary Care Network Program under a Medicaid primary care network
- 321 demonstration waiver obtained subject to Section 26-18-3;
- 322 (ii) the Children's Health Insurance Program under Section 26-40-106; or
- 323 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
- 324 No. 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. No.
- 325 109-415.
- 326 [~~35~~] (36) "Credit accident and health insurance" means insurance on a debtor to
- 327 provide indemnity for payments coming due on a specific loan or other credit transaction while
- 328 the debtor has a disability.
- 329 [~~36~~] (37) (a) "Credit insurance" means insurance offered in connection with an
- 330 extension of credit that is limited to partially or wholly extinguishing that credit obligation.
- 331 (b) "Credit insurance" includes:
- 332 (i) credit accident and health insurance;
- 333 (ii) credit life insurance;
- 334 (iii) credit property insurance;
- 335 (iv) credit unemployment insurance;
- 336 (v) guaranteed automobile protection insurance;
- 337 (vi) involuntary unemployment insurance;
- 338 (vii) mortgage accident and health insurance;
- 339 (viii) mortgage guaranty insurance; and
- 340 (ix) mortgage life insurance.
- 341 [~~37~~] (38) "Credit life insurance" means insurance on the life of a debtor in connection

342 with an extension of credit that pays a person if the debtor dies.

343 [~~(38)~~] (39) "Creditor" means a person, including an insured, having a claim, whether:

344 (a) matured;

345 (b) unmatured;

346 (c) liquidated;

347 (d) unliquidated;

348 (e) secured;

349 (f) unsecured;

350 (g) absolute;

351 (h) fixed; or

352 (i) contingent.

353 [~~(39)~~] (40) "Credit property insurance" means insurance:

354 (a) offered in connection with an extension of credit; and

355 (b) that protects the property until the debt is paid.

356 [~~(40)~~] (41) "Credit unemployment insurance" means insurance:

357 (a) offered in connection with an extension of credit; and

358 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:

359 (i) specific loan; or

360 (ii) credit transaction.

361 [~~(41)~~] (42) (a) "Crop insurance" means insurance providing protection against damage

362 to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation,

363 disease, or other yield-reducing conditions or perils that is:

364 (i) provided by the private insurance market; or

365 (ii) subsidized by the Federal Crop Insurance Corporation.

366 (b) "Crop insurance" includes multiperil crop insurance.

367 [~~(42)~~] (43) (a) "Customer service representative" means a person that provides an

368 insurance service and insurance product information:

369 (i) for the customer service representative's:

370 (A) producer;

371 (B) surplus lines producer; or

372 (C) consultant employer; and

373 (ii) to the customer service representative's employer's:

374 (A) customer;

375 (B) client; or

376 (C) organization.

377 (b) A customer service representative may only operate within the scope of authority of  
378 the customer service representative's producer, surplus lines producer, or consultant employer.

379 [~~(43)~~] (44) "Deadline" means a final date or time:

380 (a) imposed by:

381 (i) statute;

382 (ii) rule; or

383 (iii) order; and

384 (b) by which a required filing or payment must be received by the department.

385 [~~(44)~~] (45) "Deemer clause" means a provision under this title under which upon the  
386 occurrence of a condition precedent, the commissioner is considered to have taken a specific  
387 action. If the statute so provides, a condition precedent may be the commissioner's failure to  
388 take a specific action.

389 [~~(45)~~] (46) "Degree of relationship" means the number of steps between two persons  
390 determined by counting the generations separating one person from a common ancestor and  
391 then counting the generations to the other person.

392 [~~(46)~~] (47) "Department" means the Insurance Department.

393 [~~(47)~~] (48) "Director" means a member of the board of directors of a corporation.

394 [~~(48)~~] (49) "Disability" means a physiological or psychological condition that partially  
395 or totally limits an individual's ability to:

396 (a) perform the duties of:

397 (i) that individual's occupation; or

398 (ii) an occupation for which the individual is reasonably suited by education, training,  
399 or experience; or

400 (b) perform two or more of the following basic activities of daily living:

401 (i) eating;

402 (ii) toileting;

403 (iii) transferring;

- 404 (iv) bathing; or
- 405 (v) dressing.
- 406 [~~(49)~~] (50) "Disability income insurance" means the same as that term is defined in
- 407 Subsection [~~(83)~~] (85).
- 408 [~~(50)~~] (51) "Domestic insurer" means an insurer organized under the laws of this state.
- 409 [~~(51)~~] (52) "Domiciliary state" means the state in which an insurer:
- 410 (a) is incorporated;
- 411 (b) is organized; or
- 412 (c) in the case of an alien insurer, enters into the United States.
- 413 [~~(52)~~] (53) (a) "Eligible employee" means:
- 414 (i) an employee who:
- 415 (A) works on a full-time basis; and
- 416 (B) has a normal work week of 30 or more hours; or
- 417 (ii) a person described in Subsection [~~(52)~~] (53)(b).
- 418 (b) "Eligible employee" includes:
- 419 (i) an owner who:
- 420 (A) works on a full-time basis; and
- 421 (B) has a normal work week of 30 or more hours; and
- 422 (ii) if the individual is included under a health benefit plan of a small employer:
- 423 (A) a sole proprietor;
- 424 (B) a partner in a partnership; or
- 425 (C) an independent contractor.
- 426 (c) "Eligible employee" does not include, unless eligible under Subsection [~~(52)~~]
- 427 (53)(b):
- 428 (i) an individual who works on a temporary or substitute basis for a small employer;
- 429 (ii) an employer's spouse who does not meet the requirements of Subsection [~~(52)~~]
- 430 (53)(a)(i); or
- 431 (iii) a dependent of an employer who does not meet the requirements of Subsection
- 432 [~~(52)~~] (53)(a)(i).
- 433 [~~(53)~~] (54) "Employee" means:
- 434 (a) an individual employed by an employer; and

- 435 (b) an owner who meets the requirements of Subsection [~~(52)~~] (53)(b)(i).
- 436 [~~(54)~~] (55) "Employee benefits" means one or more benefits or services provided to:
- 437 (a) an employee; or
- 438 (b) a dependent of an employee.
- 439 [~~(55)~~] (56) (a) "Employee welfare fund" means a fund:
- 440 (i) established or maintained, whether directly or through a trustee, by:
- 441 (A) one or more employers;
- 442 (B) one or more labor organizations; or
- 443 (C) a combination of employers and labor organizations; and
- 444 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 445 from investments of the fund:
- 446 (A) by or on behalf of an employer doing business in this state; or
- 447 (B) for the benefit of a person employed in this state.
- 448 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax
- 449 revenues.
- 450 [~~(56)~~] (57) "Endorsement" means a written agreement attached to a policy or certificate
- 451 to modify the policy or certificate coverage.
- 452 [~~(57)~~] (58) (a) "Enrollee" means:
- 453 (i) a policyholder;
- 454 (ii) a certificate holder;
- 455 (iii) a subscriber; or
- 456 (iv) a covered individual:
- 457 (A) who has entered into a contract with an organization for health care; or
- 458 (B) on whose behalf an arrangement for health care has been made.
- 459 (b) "Enrollee" includes an insured.
- 460 [~~(58)~~] (59) "Enrollment date," with respect to a health benefit plan, means:
- 461 (a) the first day of coverage; or
- 462 (b) if there is a waiting period, the first day of the waiting period.
- 463 [~~(59)~~] (60) "Enterprise risk" means an activity, circumstance, event, or series of events
- 464 involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a
- 465 material adverse effect upon the financial condition or liquidity of the insurer or its insurance

466 holding company system as a whole, including anything that would cause:

467 (a) the insurer's risk-based capital to fall into an action or control level as set forth in

468 Sections 31A-17-601 through 31A-17-613; or

469 (b) the insurer to be in hazardous financial condition set forth in Section 31A-27a-101.

470 ~~[(60)]~~ (61) (a) "Escrow" means:

471 (i) a transaction that effects the sale, transfer, encumbering, or leasing of real property,

472 when a person not a party to the transaction, and neither having nor acquiring an interest in the

473 title, performs, in accordance with the written instructions or terms of the written agreement

474 between the parties to the transaction, any of the following actions:

475 (A) the explanation, holding, or creation of a document; or

476 (B) the receipt, deposit, and disbursement of money;

477 (ii) a settlement or closing involving:

478 (A) a mobile home;

479 (B) a grazing right;

480 (C) a water right; or

481 (D) other personal property authorized by the commissioner.

482 (b) "Escrow" does not include:

483 (i) the following notarial acts performed by a notary within the state:

484 (A) an acknowledgment;

485 (B) a copy certification;

486 (C) jurat; and

487 (D) an oath or affirmation;

488 (ii) the receipt or delivery of a document; or

489 (iii) the receipt of money for delivery to the escrow agent.

490 ~~[(61)]~~ (62) "Escrow agent" means an agency title insurance producer meeting the

491 requirements of Sections 31A-4-107, 31A-14-211, and 31A-23a-204, who is acting through an

492 individual title insurance producer licensed with an escrow subline of authority.

493 ~~[(62)]~~ (63) (a) "Excludes" is not exhaustive and does not mean that another thing is not

494 also excluded.

495 (b) The items listed in a list using the term "excludes" are representative examples for

496 use in interpretation of this title.

497           ~~[(63)]~~ (64) "Exclusion" means for the purposes of accident and health insurance that an  
498 insurer does not provide insurance coverage, for whatever reason, for one of the following:

- 499           (a) a specific physical condition;
- 500           (b) a specific medical procedure;
- 501           (c) a specific disease or disorder; or
- 502           (d) a specific prescription drug or class of prescription drugs.

503           ~~[(64)]~~ (65) "Expense reimbursement insurance" means insurance:

- 504           (a) written to provide a payment for an expense relating to hospital confinement  
505 resulting from illness or injury; and
- 506           (b) written:
  - 507           (i) as a daily limit for a specific number of days in a hospital; and
  - 508           (ii) to have a one or two day waiting period following a hospitalization.

509           ~~[(65)]~~ (66) "Fidelity insurance" means insurance guaranteeing the fidelity of a person  
510 holding a position of public or private trust.

511           ~~[(66)]~~ (67) (a) "Filed" means that a filing is:

- 512           (i) submitted to the department as required by and in accordance with applicable  
513 statute, rule, or filing order;
- 514           (ii) received by the department within the time period provided in applicable statute,  
515 rule, or filing order; and
- 516           (iii) accompanied by the appropriate fee in accordance with:
  - 517           (A) Section 31A-3-103; or
  - 518           (B) rule.

519           (b) "Filed" does not include a filing that is rejected by the department because it is not  
520 submitted in accordance with Subsection ~~[(66)]~~ (67)(a).

521           ~~[(67)]~~ (68) "Filing," when used as a noun, means an item required to be filed with the  
522 department including:

- 523           (a) a policy;
- 524           (b) a rate;
- 525           (c) a form;
- 526           (d) a document;
- 527           (e) a plan;

- 528 (f) a manual;
- 529 (g) an application;
- 530 (h) a report;
- 531 (i) a certificate;
- 532 (j) an endorsement;
- 533 (k) an actuarial certification;
- 534 (l) a licensee annual statement;
- 535 (m) a licensee renewal application;
- 536 (n) an advertisement;
- 537 (o) a binder; or
- 538 (p) an outline of coverage.

539 [~~(68)~~] (69) "First party insurance" means an insurance policy or contract in which the  
540 insurer agrees to pay a claim submitted to it by the insured for the insured's losses.

541 [~~(69)~~] (70) "Foreign insurer" means an insurer domiciled outside of this state, including  
542 an alien insurer.

543 [~~(70)~~] (71) (a) "Form" means one of the following prepared for general use:

- 544 (i) a policy;
- 545 (ii) a certificate;
- 546 (iii) an application;
- 547 (iv) an outline of coverage; or
- 548 (v) an endorsement.

549 (b) "Form" does not include a document specially prepared for use in an individual  
550 case.

551 [~~(71)~~] (72) "Franchise insurance" means an individual insurance policy provided  
552 through a mass marketing arrangement involving a defined class of persons related in some  
553 way other than through the purchase of insurance.

554 [~~(72)~~] (73) "General lines of authority" include:

- 555 (a) the general lines of insurance in Subsection [~~(73)~~] (74);
- 556 (b) title insurance under one of the following sublines of authority:
  - 557 (i) title examination, including authority to act as a title marketing representative;
  - 558 (ii) escrow, including authority to act as a title marketing representative; and

559 (iii) title marketing representative only;  
560 (c) surplus lines;  
561 (d) workers' compensation; and  
562 (e) another line of insurance that the commissioner considers necessary to recognize in  
563 the public interest.

564 [~~(73)~~] (74) "General lines of insurance" include:

565 (a) accident and health;  
566 (b) casualty;  
567 (c) life;  
568 (d) personal lines;  
569 (e) property; and  
570 (f) variable contracts, including variable life and annuity.

571 [~~(74)~~] (75) "Group health plan" means an employee welfare benefit plan to the extent  
572 that the plan provides medical care:

573 (a) (i) to an employee; or  
574 (ii) to a dependent of an employee; and  
575 (b) (i) directly;  
576 (ii) through insurance reimbursement; or  
577 (iii) through another method.

578 [~~(75)~~] (76) (a) "Group insurance policy" means a policy covering a group of persons  
579 that is issued:

580 (i) to a policyholder on behalf of the group; and  
581 (ii) for the benefit of a member of the group who is selected under a procedure defined  
582 in:

583 (A) the policy; or  
584 (B) an agreement that is collateral to the policy.

585 (b) A group insurance policy may include a member of the policyholder's family or a  
586 dependent.

587 (77) "Group-wide supervisor" means the commissioner or other regulatory official  
588 designated as the group-wide supervisor for an internationally active insurance group under  
589 Section 31A-16-108.6.

590           ~~[(76)]~~ (78) "Guaranteed automobile protection insurance" means insurance offered in  
591 connection with an extension of credit that pays the difference in amount between the  
592 insurance settlement and the balance of the loan if the insured automobile is a total loss.

593           ~~[(77)]~~ (79) (a) "Health benefit plan" means, except as provided in Subsection ~~[(77)]~~  
594 (79)(b), a policy, contract, certificate, or agreement offered or issued by a health carrier to  
595 provide, deliver, arrange for, pay for, or reimburse any of the costs of health care.

596           (b) "Health benefit plan" does not include:

597           (i) coverage only for accident or disability income insurance, or any combination  
598 thereof;

599           (ii) coverage issued as a supplement to liability insurance;

600           (iii) liability insurance, including general liability insurance and automobile liability  
601 insurance;

602           (iv) workers' compensation or similar insurance;

603           (v) automobile medical payment insurance;

604           (vi) credit-only insurance;

605           (vii) coverage for on-site medical clinics;

606           (viii) other similar insurance coverage, specified in federal regulations issued pursuant  
607 to Pub. L. No. 104-191, under which benefits for health care services are secondary or  
608 incidental to other insurance benefits;

609           (ix) the following benefits if they are provided under a separate policy, certificate, or  
610 contract of insurance or are otherwise not an integral part of the plan:

611           (A) limited scope dental or vision benefits;

612           (B) benefits for long-term care, nursing home care, home health care,  
613 community-based care, or any combination thereof; or

614           (C) other similar limited benefits, specified in federal regulations issued pursuant to  
615 Pub. L. No. 104-191;

616           (x) the following benefits if the benefits are provided under a separate policy,  
617 certificate, or contract of insurance, there is no coordination between the provision of benefits  
618 and any exclusion of benefits under any health plan, and the benefits are paid with respect to an  
619 event without regard to whether benefits are provided under any health plan:

620           (A) coverage only for specified disease or illness; or

- 621 (B) hospital indemnity or other fixed indemnity insurance; and
- 622 (xi) the following if offered as a separate policy, certificate, or contract of insurance:
- 623 (A) Medicare supplemental health insurance as defined under the Social Security Act,
- 624 42 U.S.C. Sec. 1395ss(g)(1);
- 625 (B) coverage supplemental to the coverage provided under United States Code, Title
- 626 10, Chapter 55, Civilian Health and Medical Program of the Uniformed Services
- 627 (CHAMPUS); or
- 628 (C) similar supplemental coverage provided to coverage under a group health insurance
- 629 plan.
- 630 [~~(78)~~] (80) "Health care" means any of the following intended for use in the diagnosis,
- 631 treatment, mitigation, or prevention of a human ailment or impairment:
- 632 (a) a professional service;
- 633 (b) a personal service;
- 634 (c) a facility;
- 635 (d) equipment;
- 636 (e) a device;
- 637 (f) supplies; or
- 638 (g) medicine.
- 639 [~~(79)~~] (81) (a) "Health care insurance" or "health insurance" means insurance
- 640 providing:
- 641 (i) a health care benefit; or
- 642 (ii) payment of an incurred health care expense.
- 643 (b) "Health care insurance" or "health insurance" does not include accident and health
- 644 insurance providing a benefit for:
- 645 (i) replacement of income;
- 646 (ii) short-term accident;
- 647 (iii) fixed indemnity;
- 648 (iv) credit accident and health;
- 649 (v) supplements to liability;
- 650 (vi) workers' compensation;
- 651 (vii) automobile medical payment;

652 (viii) no-fault automobile;

653 (ix) equivalent self-insurance; or

654 (x) a type of accident and health insurance coverage that is a part of or attached to  
655 another type of policy.

656 ~~[(80)]~~ (82) "Health care provider" means the same as that term is defined in Section  
657 78B-3-403.

658 ~~[(81)]~~ (83) "Health insurance exchange" means an exchange as defined in 45 C.F.R.  
659 Sec. 155.20.

660 ~~[(82)]~~ (84) "Health Insurance Portability and Accountability Act" means the Health  
661 Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as  
662 amended.

663 ~~[(83)]~~ (85) "Income replacement insurance" or "disability income insurance" means  
664 insurance written to provide payments to replace income lost from accident or sickness.

665 ~~[(84)]~~ (86) "Indemnity" means the payment of an amount to offset all or part of an  
666 insured loss.

667 ~~[(85)]~~ (87) "Independent adjuster" means an insurance adjuster required to be licensed  
668 under Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.

669 ~~[(86)]~~ (88) "Independently procured insurance" means insurance procured under  
670 Section 31A-15-104.

671 ~~[(87)]~~ (89) "Individual" means a natural person.

672 ~~[(88)]~~ (90) "Inland marine insurance" includes insurance covering:

673 (a) property in transit on or over land;

674 (b) property in transit over water by means other than boat or ship;

675 (c) bailee liability;

676 (d) fixed transportation property such as bridges, electric transmission systems, radio  
677 and television transmission towers and tunnels; and

678 (e) personal and commercial property floaters.

679 ~~[(89)]~~ (91) "Insolvency" or "insolvent" means that:

680 (a) an insurer is unable to pay the insurer's obligations as the obligations are due;

681 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level

682 RBC under Subsection 31A-17-601(8)(c); or

- 683 (c) an insurer's admitted assets are less than the insurer's liabilities.
- 684 [~~(90)~~] (92) (a) "Insurance" means:
- 685 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more  
686 persons to one or more other persons; or
- 687 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a  
688 group of persons that includes the person seeking to distribute that person's risk.
- 689 (b) "Insurance" includes:
- 690 (i) a risk distributing arrangement providing for compensation or replacement for  
691 damages or loss through the provision of a service or a benefit in kind;
- 692 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a  
693 business and not as merely incidental to a business transaction; and
- 694 (iii) a plan in which the risk does not rest upon the person who makes an arrangement,  
695 but with a class of persons who have agreed to share the risk.
- 696 [~~(91)~~] (93) "Insurance adjuster" means a person who directs or conducts the  
697 investigation, negotiation, or settlement of a claim under an insurance policy other than life  
698 insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance  
699 policy.
- 700 [~~(92)~~] (94) "Insurance business" or "business of insurance" includes:
- 701 (a) providing health care insurance by an organization that is or is required to be  
702 licensed under this title;
- 703 (b) providing a benefit to an employee in the event of a contingency not within the  
704 control of the employee, in which the employee is entitled to the benefit as a right, which  
705 benefit may be provided either:
- 706 (i) by a single employer or by multiple employer groups; or
- 707 (ii) through one or more trusts, associations, or other entities;
- 708 (c) providing an annuity:
- 709 (i) including an annuity issued in return for a gift; and
- 710 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2)  
711 and (3);
- 712 (d) providing the characteristic services of a motor club as outlined in Subsection  
713 [~~(124)~~] (125);

- 714 (e) providing another person with insurance;
- 715 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
- 716 or surety, a contract or policy of title insurance;
- 717 (g) transacting or proposing to transact any phase of title insurance, including:
- 718 (i) solicitation;
- 719 (ii) negotiation preliminary to execution;
- 720 (iii) execution of a contract of title insurance;
- 721 (iv) insuring; and
- 722 (v) transacting matters subsequent to the execution of the contract and arising out of
- 723 the contract, including reinsurance;
- 724 (h) transacting or proposing a life settlement; and
- 725 (i) doing, or proposing to do, any business in substance equivalent to Subsections
- 726 ~~[(92)]~~ (94)(a) through (h) in a manner designed to evade this title.
- 727 ~~[(93)]~~ (95) "Insurance consultant" or "consultant" means a person who:
- 728 (a) advises another person about insurance needs and coverages;
- 729 (b) is compensated by the person advised on a basis not directly related to the insurance
- 730 placed; and
- 731 (c) except as provided in Section 31A-23a-501, is not compensated directly or
- 732 indirectly by an insurer or producer for advice given.
- 733 (96) "Insurance group" means the persons that comprise an insurance holding company
- 734 system.
- 735 ~~[(94)]~~ (97) "Insurance holding company system" means a group of two or more
- 736 affiliated persons, at least one of whom is an insurer.
- 737 ~~[(95)]~~ (98) (a) "Insurance producer" or "producer" means a person licensed or required
- 738 to be licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 739 (b) (i) "Producer for the insurer" means a producer who is compensated directly or
- 740 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that
- 741 insurer.
- 742 (ii) "Producer for the insurer" may be referred to as an "agent."
- 743 (c) (i) "Producer for the insured" means a producer who:
- 744 (A) is compensated directly and only by an insurance customer or an insured; and

745 (B) receives no compensation directly or indirectly from an insurer for selling,  
746 soliciting, or negotiating an insurance product of that insurer to an insurance customer or  
747 insured.

748 (ii) "Producer for the insured" may be referred to as a "broker."

749 ~~[(96)]~~ (99) (a) "Insured" means a person to whom or for whose benefit an insurer  
750 makes a promise in an insurance policy and includes:

751 (i) a policyholder;

752 (ii) a subscriber;

753 (iii) a member; and

754 (iv) a beneficiary.

755 (b) The definition in Subsection ~~[(96)]~~ (99)(a):

756 (i) applies only to this title;

757 (ii) does not define the meaning of "insured" as used in an insurance policy or  
758 certificate; and

759 (iii) includes an enrollee.

760 ~~[(97)]~~ (100) (a) "Insurer" means a person doing an insurance business as a principal  
761 including:

762 (i) a fraternal benefit society;

763 (ii) an issuer of a gift annuity other than an annuity specified in Subsections  
764 31A-22-1305(2) and (3);

765 (iii) a motor club;

766 (iv) an employee welfare plan;

767 (v) a person purporting or intending to do an insurance business as a principal on that  
768 person's own account; and

769 (vi) a health maintenance organization.

770 (b) "Insurer" does not include a governmental entity ~~[to the extent the governmental~~  
771 ~~entity is engaged in an activity described in Section 31A-12-107].~~

772 ~~[(98)]~~ (101) "Interinsurance exchange" means the same as that term is defined in  
773 Subsection ~~[(153)]~~ (160).

774 (102) "Internationally active insurance group" means an insurance holding company  
775 system:

- 776 (a) that includes an insurer registered under Section 34A-16-105;  
 777 (b) that has premiums written in at least three countries;  
 778 (c) whose percentage of gross premiums written outside the United States is at least  
 779 10% of its total gross written premiums; and  
 780 (d) that, based on a three-year rolling average, has:  
 781 (i) total assets of at least \$50,000,000,000; or  
 782 (ii) total gross written premiums of at least \$10,000,000,000.
- 783 [~~99~~] (103) "Involuntary unemployment insurance" means insurance:  
 784 (a) offered in connection with an extension of credit; and  
 785 (b) that provides indemnity if the debtor is involuntarily unemployed for payments  
 786 coming due on a:  
 787 (i) specific loan; or  
 788 (ii) credit transaction.
- 789 [~~100~~] (104) (a) "Large employer," in connection with a health benefit plan, means an  
 790 employer who, with respect to a calendar year and to a plan year:  
 791 (i) employed an average of at least 51 employees on business days during the preceding  
 792 calendar year; and  
 793 (ii) employs at least one employee on the first day of the plan year.  
 794 (b) The number of employees shall be determined using the method set forth in 26  
 795 U.S.C. Sec. 4980H(c)(2).
- 796 [~~101~~] (105) "Late enrollee," with respect to an employer health benefit plan, means  
 797 an individual whose enrollment is a late enrollment.
- 798 [~~102~~] (106) "Late enrollment," with respect to an employer health benefit plan, means  
 799 enrollment of an individual other than:  
 800 (a) on the earliest date on which coverage can become effective for the individual  
 801 under the terms of the plan; or  
 802 (b) through special enrollment.
- 803 [~~103~~] (107) (a) Except for a retainer contract or legal assistance described in Section  
 804 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a  
 805 specified legal expense.  
 806 (b) "Legal expense insurance" includes an arrangement that creates a reasonable

807 expectation of an enforceable right.

808 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,  
809 legal services incidental to other insurance coverage.

810 ~~[(104)]~~ (108) (a) "Liability insurance" means insurance against liability:

811 (i) for death, injury, or disability of a human being, or for damage to property,

812 exclusive of the coverages under:

813 (A) medical malpractice insurance;

814 (B) professional liability insurance; and

815 (C) workers' compensation insurance;

816 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the

817 insured who is injured, irrespective of legal liability of the insured, when issued with or

818 supplemental to insurance against legal liability for the death, injury, or disability of a human

819 being, exclusive of the coverages under:

820 (A) medical malpractice insurance;

821 (B) professional liability insurance; and

822 (C) workers' compensation insurance;

823 (iii) for loss or damage to property resulting from an accident to or explosion of a

824 boiler, pipe, pressure container, machinery, or apparatus;

825 (iv) for loss or damage to property caused by:

826 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or

827 (B) water entering through a leak or opening in a building; or

828 (v) for other loss or damage properly the subject of insurance not within another kind

829 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

830 (b) "Liability insurance" includes:

831 (i) vehicle liability insurance;

832 (ii) residential dwelling liability insurance; and

833 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,

834 boiler, machinery, or apparatus of any kind when done in connection with insurance on the

835 elevator, boiler, machinery, or apparatus.

836 ~~[(105)]~~ (109) (a) "License" means authorization issued by the commissioner to engage

837 in an activity that is part of or related to the insurance business.

- 838 (b) "License" includes a certificate of authority issued to an insurer.
- 839 [~~(106)~~] (110) (a) "Life insurance" means:
- 840 (i) insurance on a human life; and
- 841 (ii) insurance pertaining to or connected with human life.
- 842 (b) The business of life insurance includes:
- 843 (i) granting a death benefit;
- 844 (ii) granting an annuity benefit;
- 845 (iii) granting an endowment benefit;
- 846 (iv) granting an additional benefit in the event of death by accident;
- 847 (v) granting an additional benefit to safeguard the policy against lapse; and
- 848 (vi) providing an optional method of settlement of proceeds.
- 849 [~~(107)~~] (111) "Limited license" means a license that:
- 850 (a) is issued for a specific product of insurance; and
- 851 (b) limits an individual or agency to transact only for that product or insurance.
- 852 [~~(108)~~] (112) "Limited line credit insurance" includes the following forms of
- 853 insurance:
- 854 (a) credit life;
- 855 (b) credit accident and health;
- 856 (c) credit property;
- 857 (d) credit unemployment;
- 858 (e) involuntary unemployment;
- 859 (f) mortgage life;
- 860 (g) mortgage guaranty;
- 861 (h) mortgage accident and health;
- 862 (i) guaranteed automobile protection; and
- 863 (j) another form of insurance offered in connection with an extension of credit that:
- 864 (i) is limited to partially or wholly extinguishing the credit obligation; and
- 865 (ii) the commissioner determines by rule should be designated as a form of limited line
- 866 credit insurance.
- 867 [~~(109)~~] (113) "Limited line credit insurance producer" means a person who sells,
- 868 solicits, or negotiates one or more forms of limited line credit insurance coverage to an

869 individual through a master, corporate, group, or individual policy.

870 ~~[(110)]~~ (114) "Limited line insurance" includes:

871 (a) bail bond;

872 (b) limited line credit insurance;

873 (c) legal expense insurance;

874 (d) motor club insurance;

875 (e) car rental related insurance;

876 (f) travel insurance;

877 (g) crop insurance;

878 (h) self-service storage insurance;

879 (i) guaranteed asset protection waiver;

880 (j) portable electronics insurance; and

881 (k) another form of limited insurance that the commissioner determines by rule should

882 be designated a form of limited line insurance.

883 ~~[(111)]~~ (115) "Limited lines authority" includes the lines of insurance listed in

884 Subsection ~~[(110)]~~ (114).

885 ~~[(112)]~~ (116) "Limited lines producer" means a person who sells, solicits, or negotiates

886 limited lines insurance.

887 ~~[(113)]~~ (117) (a) "Long-term care insurance" means an insurance policy or rider

888 advertised, marketed, offered, or designated to provide coverage:

889 (i) in a setting other than an acute care unit of a hospital;

890 (ii) for not less than 12 consecutive months for a covered person on the basis of:

891 (A) expenses incurred;

892 (B) indemnity;

893 (C) prepayment; or

894 (D) another method;

895 (iii) for one or more necessary or medically necessary services that are:

896 (A) diagnostic;

897 (B) preventative;

898 (C) therapeutic;

899 (D) rehabilitative;

- 900 (E) maintenance; or
- 901 (F) personal care; and
- 902 (iv) that may be issued by:
- 903 (A) an insurer;
- 904 (B) a fraternal benefit society;
- 905 (C) (I) a nonprofit health hospital; and
- 906 (II) a medical service corporation;
- 907 (D) a prepaid health plan;
- 908 (E) a health maintenance organization; or
- 909 (F) an entity similar to the entities described in Subsections [~~(113)~~] (117)(a)(iv)(A)
- 910 through (E) to the extent that the entity is otherwise authorized to issue life or health care
- 911 insurance.
- 912 (b) "Long-term care insurance" includes:
- 913 (i) any of the following that provide directly or supplement long-term care insurance:
- 914 (A) a group or individual annuity or rider; or
- 915 (B) a life insurance policy or rider;
- 916 (ii) a policy or rider that provides for payment of benefits on the basis of:
- 917 (A) cognitive impairment; or
- 918 (B) functional capacity; or
- 919 (iii) a qualified long-term care insurance contract.
- 920 (c) "Long-term care insurance" does not include:
- 921 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 922 (ii) basic hospital expense coverage;
- 923 (iii) basic medical/surgical expense coverage;
- 924 (iv) hospital confinement indemnity coverage;
- 925 (v) major medical expense coverage;
- 926 (vi) income replacement or related asset-protection coverage;
- 927 (vii) accident only coverage;
- 928 (viii) coverage for a specified:
- 929 (A) disease; or
- 930 (B) accident;

- 931 (ix) limited benefit health coverage; or
- 932 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 933 lump sum payment:
- 934 (A) if the following are not conditioned on the receipt of long-term care:
- 935 (I) benefits; or
- 936 (II) eligibility; and
- 937 (B) the coverage is for one or more the following qualifying events:
- 938 (I) terminal illness;
- 939 (II) medical conditions requiring extraordinary medical intervention; or
- 940 (III) permanent institutional confinement.
- 941 [~~(114)~~] (118) "Managed care organization" means a person:
- 942 (a) licensed as a health maintenance organization under Chapter 8, Health Maintenance
- 943 Organizations and Limited Health Plans; or
- 944 (b) (i) licensed under:
- 945 (A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- 946 (B) Chapter 7, Nonprofit Health Service Insurance Corporations; or
- 947 (C) Chapter 14, Foreign Insurers; and
- 948 (ii) that requires an enrollee to use, or offers incentives, including financial incentives,
- 949 for an enrollee to use, network providers.
- 950 [~~(115)~~] (119) "Medical malpractice insurance" means insurance against legal liability
- 951 incident to the practice and provision of a medical service other than the practice and provision
- 952 of a dental service.
- 953 [~~(116)~~] (120) "Member" means a person having membership rights in an insurance
- 954 corporation.
- 955 [~~(117)~~] (121) "Minimum capital" or "minimum required capital" means the capital that
- 956 must be constantly maintained by a stock insurance corporation as required by statute.
- 957 [~~(118)~~] (122) "Mortgage accident and health insurance" means insurance offered in
- 958 connection with an extension of credit that provides indemnity for payments coming due on a
- 959 mortgage while the debtor has a disability.
- 960 [~~(119)~~] (123) "Mortgage guaranty insurance" means surety insurance under which a
- 961 mortgagee or other creditor is indemnified against losses caused by the default of a debtor.

962           ~~[(120)]~~ (124) "Mortgage life insurance" means insurance on the life of a debtor in  
963 connection with an extension of credit that pays if the debtor dies.

964           ~~[(121)]~~ (125) "Motor club" means a person:

965           (a) licensed under:

966           (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

967           (ii) Chapter 11, Motor Clubs; or

968           (iii) Chapter 14, Foreign Insurers; and

969           (b) that promises for an advance consideration to provide for a stated period of time

970 one or more:

971           (i) legal services under Subsection 31A-11-102(1)(b);

972           (ii) bail services under Subsection 31A-11-102(1)(c); or

973           (iii) (A) trip reimbursement;

974           (B) towing services;

975           (C) emergency road services;

976           (D) stolen automobile services;

977           (E) a combination of the services listed in Subsections ~~[(121)]~~ (125)(b)(iii)(A) through  
978 (D); or

979           (F) other services given in Subsections 31A-11-102(1)(b) through (f).

980           ~~[(122)]~~ (126) "Mutual" means a mutual insurance corporation.

981           ~~[(123)]~~ (127) "Network plan" means health care insurance:

982           (a) that is issued by an insurer; and

983           (b) under which the financing and delivery of medical care is provided, in whole or in  
984 part, through a defined set of providers under contract with the insurer, including the financing  
985 and delivery of an item paid for as medical care.

986           ~~[(124)]~~ (128) "Network provider" means a health care provider who has an agreement  
987 with a managed care organization to provide health care services to an enrollee with an  
988 expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly  
989 from the managed care organization.

990           ~~[(125)]~~ (129) "Nonparticipating" means a plan of insurance under which the insured is  
991 not entitled to receive a dividend representing a share of the surplus of the insurer.

992           ~~[(126)]~~ (130) "Ocean marine insurance" means insurance against loss of or damage to:

993 (a) ships or hulls of ships;  
994 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,  
995 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia  
996 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;  
997 (c) earnings such as freight, passage money, commissions, or profits derived from  
998 transporting goods or people upon or across the oceans or inland waterways; or  
999 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,  
1000 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons  
1001 in connection with maritime activity.

1002 ~~[(127)]~~ (131) "Order" means an order of the commissioner.

1003 (132) "ORSA guidance manual" means the current version of the Own Risk and  
1004 Solvency Assessment Guidance Manual developed and adopted by the National Association of  
1005 Insurance Commissioners and as amended from time to time.

1006 (133) "ORSA summary report" means a confidential high-level summary of an insurer  
1007 or insurance group's own risk and solvency assessment.

1008 ~~[(128)]~~ (134) "Outline of coverage" means a summary that explains an accident and  
1009 health insurance policy.

1010 (135) "Own risk and solvency assessment" means an insurer or insurance group's  
1011 confidential internal assessment:

1012 (a) (i) of each material and relevant risk associated with the insurer or insurance group;

1013 (ii) of the insurer or insurance group's current business plan to support each risk  
1014 described in Subsection (135)(a)(i); and

1015 (iii) of the sufficiency of capital resources to support each risk described in Subsection  
1016 (135)(a)(i); and

1017 (b) that is appropriate to the nature, scale, and complexity of an insurer or insurance  
1018 group.

1019 ~~[(129)]~~ (136) "Participating" means a plan of insurance under which the insured is  
1020 entitled to receive a dividend representing a share of the surplus of the insurer.

1021 ~~[(130)]~~ (137) "Participation," as used in a health benefit plan, means a requirement  
1022 relating to the minimum percentage of eligible employees that must be enrolled in relation to  
1023 the total number of eligible employees of an employer reduced by each eligible employee who

- 1024 voluntarily declines coverage under the plan because the employee:
- 1025 (a) has other group health care insurance coverage; or
- 1026 (b) receives:
- 1027 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social
- 1028 Security Amendments of 1965; or
- 1029 (ii) another government health benefit.
- 1030 ~~[(131)]~~ (138) "Person" includes:
- 1031 (a) an individual;
- 1032 (b) a partnership;
- 1033 (c) a corporation;
- 1034 (d) an incorporated or unincorporated association;
- 1035 (e) a joint stock company;
- 1036 (f) a trust;
- 1037 (g) a limited liability company;
- 1038 (h) a reciprocal;
- 1039 (i) a syndicate; or
- 1040 (j) another similar entity or combination of entities acting in concert.
- 1041 ~~[(132)]~~ (139) "Personal lines insurance" means property and casualty insurance
- 1042 coverage sold for primarily noncommercial purposes to:
- 1043 (a) an individual; or
- 1044 (b) a family.
- 1045 ~~[(133)]~~ (140) "Plan sponsor" means the same as that term is defined in 29 U.S.C. Sec.
- 1046 1002(16)(B).
- 1047 ~~[(134)]~~ (141) "Plan year" means:
- 1048 (a) the year that is designated as the plan year in:
- 1049 (i) the plan document of a group health plan; or
- 1050 (ii) a summary plan description of a group health plan;
- 1051 (b) if the plan document or summary plan description does not designate a plan year or
- 1052 there is no plan document or summary plan description:
- 1053 (i) the year used to determine deductibles or limits;
- 1054 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;

1055 or

1056 (iii) the employer's taxable year if:

1057 (A) the plan does not impose deductibles or limits on a yearly basis; and

1058 (B) (I) the plan is not insured; or

1059 (II) the insurance policy is not renewed on an annual basis; or

1060 (c) in a case not described in Subsection [~~(134)~~] (141)(a) or (b), the calendar year.

1061 [~~(135)~~] (142) (a) "Policy" means a document, including an attached endorsement or

1062 application that:

1063 (i) purports to be an enforceable contract; and

1064 (ii) memorializes in writing some or all of the terms of an insurance contract.

1065 (b) "Policy" includes a service contract issued by:

1066 (i) a motor club under Chapter 11, Motor Clubs;

1067 (ii) a service contract provided under Chapter 6a, Service Contracts; and

1068 (iii) a corporation licensed under:

1069 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or

1070 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

1071 (c) "Policy" does not include:

1072 (i) a certificate under a group insurance contract; or

1073 (ii) a document that does not purport to have legal effect.

1074 [~~(136)~~] (143) "Policyholder" means a person who controls a policy, binder, or oral

1075 contract by ownership, premium payment, or otherwise.

1076 [~~(137)~~] (144) "Policy illustration" means a presentation or depiction that includes

1077 nonguaranteed elements of a policy of life insurance over a period of years.

1078 [~~(138)~~] (145) "Policy summary" means a synopsis describing the elements of a life

1079 insurance policy.

1080 [~~(139)~~] (146) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L.

1081 No. 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152,

1082 and related federal regulations and guidance.

1083 [~~(140)~~] (147) "Preexisting condition," with respect to health care insurance:

1084 (a) means a condition that was present before the effective date of coverage, whether or

1085 not medical advice, diagnosis, care, or treatment was recommended or received before that day;

1086 and

1087 (b) does not include a condition indicated by genetic information unless an actual  
1088 diagnosis of the condition by a physician has been made.

1089 [~~(141)~~] (148) (a) "Premium" means the monetary consideration for an insurance policy.

1090 (b) "Premium" includes, however designated:

1091 (i) an assessment;

1092 (ii) a membership fee;

1093 (iii) a required contribution; or

1094 (iv) monetary consideration.

1095 (c) (i) "Premium" does not include consideration paid to a third party administrator for  
1096 the third party administrator's services.

1097 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for  
1098 insurance on the risks administered by the third party administrator.

1099 [~~(142)~~] (149) "Principal officers" for a corporation means the officers designated under  
1100 Subsection 31A-5-203(3).

1101 [~~(143)~~] (150) "Proceeding" includes an action or special statutory proceeding.

1102 [~~(144)~~] (151) "Professional liability insurance" means insurance against legal liability  
1103 incident to the practice of a profession and provision of a professional service.

1104 [~~(145)~~] (152) (a) Except as provided in Subsection [~~(145)~~] (152)(b), "property  
1105 insurance" means insurance against loss or damage to real or personal property of every kind  
1106 and any interest in that property:

1107 (i) from all hazards or causes; and

1108 (ii) against loss consequential upon the loss or damage including vehicle  
1109 comprehensive and vehicle physical damage coverages.

1110 (b) "Property insurance" does not include:

1111 (i) inland marine insurance; and

1112 (ii) ocean marine insurance.

1113 [~~(146)~~] (153) "Qualified long-term care insurance contract" or "federally tax qualified  
1114 long-term care insurance contract" means:

1115 (a) an individual or group insurance contract that meets the requirements of Section  
1116 7702B(b), Internal Revenue Code; or

1117 (b) the portion of a life insurance contract that provides long-term care insurance:  
1118 (i) (A) by rider; or  
1119 (B) as a part of the contract; and  
1120 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue  
1121 Code.  
1122 [~~(147)~~] (154) "Qualified United States financial institution" means an institution that:  
1123 (a) is:  
1124 (i) organized under the laws of the United States or any state; or  
1125 (ii) in the case of a United States office of a foreign banking organization, licensed  
1126 under the laws of the United States or any state;  
1127 (b) is regulated, supervised, and examined by a United States federal or state authority  
1128 having regulatory authority over a bank or trust company; and  
1129 (c) meets the standards of financial condition and standing that are considered  
1130 necessary and appropriate to regulate the quality of a financial institution whose letters of credit  
1131 will be acceptable to the commissioner as determined by:  
1132 (i) the commissioner by rule; or  
1133 (ii) the Securities Valuation Office of the National Association of Insurance  
1134 Commissioners.  
1135 [~~(148)~~] (155) (a) "Rate" means:  
1136 (i) the cost of a given unit of insurance; or  
1137 (ii) for property or casualty insurance, that cost of insurance per exposure unit either  
1138 expressed as:  
1139 (A) a single number; or  
1140 (B) a pure premium rate, adjusted before the application of individual risk variations  
1141 based on loss or expense considerations to account for the treatment of:  
1142 (I) expenses;  
1143 (II) profit; and  
1144 (III) individual insurer variation in loss experience.  
1145 (b) "Rate" does not include a minimum premium.  
1146 [~~(149)~~] (156) (a) Except as provided in Subsection [~~(149)~~] (156)(b), "rate service  
1147 organization" means a person who assists an insurer in rate making or filing by:

- 1148 (i) collecting, compiling, and furnishing loss or expense statistics;
- 1149 (ii) recommending, making, or filing rates or supplementary rate information; or
- 1150 (iii) advising about rate questions, except as an attorney giving legal advice.
- 1151 (b) "Rate service organization" does not mean:
- 1152 (i) an employee of an insurer;
- 1153 (ii) a single insurer or group of insurers under common control;
- 1154 (iii) a joint underwriting group; or
- 1155 (iv) an individual serving as an actuarial or legal consultant.
- 1156 [~~(150)~~] (157) "Rating manual" means any of the following used to determine initial and
- 1157 renewal policy premiums:
- 1158 (a) a manual of rates;
- 1159 (b) a classification;
- 1160 (c) a rate-related underwriting rule; and
- 1161 (d) a rating formula that describes steps, policies, and procedures for determining
- 1162 initial and renewal policy premiums.
- 1163 [~~(151)~~] (158) (a) "Rebate" means a licensee paying, allowing, giving, or offering to
- 1164 pay, allow, or give, directly or indirectly:
- 1165 (i) a refund of premium or portion of premium;
- 1166 (ii) a refund of commission or portion of commission;
- 1167 (iii) a refund of all or a portion of a consultant fee; or
- 1168 (iv) providing services or other benefits not specified in an insurance or annuity
- 1169 contract.
- 1170 (b) "Rebate" does not include:
- 1171 (i) a refund due to termination or changes in coverage;
- 1172 (ii) a refund due to overcharges made in error by the licensee; or
- 1173 (iii) savings or wellness benefits as provided in the contract by the licensee.
- 1174 [~~(152)~~] (159) "Received by the department" means:
- 1175 (a) the date delivered to and stamped received by the department, if delivered in
- 1176 person;
- 1177 (b) the post mark date, if delivered by mail;
- 1178 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;

1179 (d) the received date recorded on an item delivered, if delivered by:

1180 (i) facsimile;

1181 (ii) email; or

1182 (iii) another electronic method; or

1183 (e) a date specified in:

1184 (i) a statute;

1185 (ii) a rule; or

1186 (iii) an order.

1187 [~~(153)~~] (160) "Reciprocal" or "interinsurance exchange" means an unincorporated  
1188 association of persons:

1189 (a) operating through an attorney-in-fact common to all of the persons; and

1190 (b) exchanging insurance contracts with one another that provide insurance coverage  
1191 on each other.

1192 [~~(154)~~] (161) "Reinsurance" means an insurance transaction where an insurer, for  
1193 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to  
1194 reinsurance transactions, this title sometimes refers to:

1195 (a) the insurer transferring the risk as the "ceding insurer"; and

1196 (b) the insurer assuming the risk as the:

1197 (i) "assuming insurer"; or

1198 (ii) "assuming reinsurer."

1199 [~~(155)~~] (162) "Reinsurer" means a person licensed in this state as an insurer with the  
1200 authority to assume reinsurance.

1201 [~~(156)~~] (163) "Residential dwelling liability insurance" means insurance against  
1202 liability resulting from or incident to the ownership, maintenance, or use of a residential  
1203 dwelling that is a detached single family residence or multifamily residence up to four units.

1204 [~~(157)~~] (164) (a) "Retrocession" means reinsurance with another insurer of a liability  
1205 assumed under a reinsurance contract.

1206 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a  
1207 liability assumed under a reinsurance contract.

1208 [~~(158)~~] (165) "Rider" means an endorsement to:

1209 (a) an insurance policy; or

- 1210 (b) an insurance certificate.
- 1211 [~~(159)~~] (166) "Secondary medical condition" means a complication related to an
- 1212 exclusion from coverage in accident and health insurance.
- 1213 [~~(160)~~] (167) (a) "Security" means a:
- 1214 (i) note;
- 1215 (ii) stock;
- 1216 (iii) bond;
- 1217 (iv) debenture;
- 1218 (v) evidence of indebtedness;
- 1219 (vi) certificate of interest or participation in a profit-sharing agreement;
- 1220 (vii) collateral-trust certificate;
- 1221 (viii) preorganization certificate or subscription;
- 1222 (ix) transferable share;
- 1223 (x) investment contract;
- 1224 (xi) voting trust certificate;
- 1225 (xii) certificate of deposit for a security;
- 1226 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 1227 payments out of production under such a title or lease;
- 1228 (xiv) commodity contract or commodity option;
- 1229 (xv) certificate of interest or participation in, temporary or interim certificate for,
- 1230 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
- 1231 in Subsections [~~(160)~~] (167)(a)(i) through (xiv); or
- 1232 (xvi) another interest or instrument commonly known as a security.
- 1233 (b) "Security" does not include:
- 1234 (i) any of the following under which an insurance company promises to pay money in a
- 1235 specific lump sum or periodically for life or some other specified period:
- 1236 (A) insurance;
- 1237 (B) an endowment policy; or
- 1238 (C) an annuity contract; or
- 1239 (ii) a burial certificate or burial contract.
- 1240 [~~(161)~~] (168) "Securityholder" means a specified person who owns a security of a

1241 person, including:

1242 (a) common stock;

1243 (b) preferred stock;

1244 (c) debt obligations; and

1245 (d) any other security convertible into or evidencing the right of any of the items listed

1246 in this Subsection [~~(161)~~] (168).

1247 [~~(162)~~] (169) (a) "Self-insurance" means an arrangement under which a person

1248 provides for spreading its own risks by a systematic plan.

1249 (b) Except as provided in this Subsection [~~(162)~~] (169), "self-insurance" does not

1250 include an arrangement under which a number of persons spread their risks among themselves.

1251 (c) "Self-insurance" includes:

1252 (i) an arrangement by which a governmental entity undertakes to indemnify an

1253 employee for liability arising out of the employee's employment; and

1254 (ii) an arrangement by which a person with a managed program of self-insurance and

1255 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or

1256 employees for liability or risk that is related to the relationship or employment.

1257 (d) "Self-insurance" does not include an arrangement with an independent contractor.

1258 [~~(163)~~] (170) "Sell" means to exchange a contract of insurance:

1259 (a) by any means;

1260 (b) for money or its equivalent; and

1261 (c) on behalf of an insurance company.

1262 [~~(164)~~] (171) "Short-term care insurance" means an insurance policy or rider

1263 advertised, marketed, offered, or designed to provide coverage that is similar to long-term care

1264 insurance, but that provides coverage for less than 12 consecutive months for each covered

1265 person.

1266 (172) "Short-term limited duration health insurance" means a health benefit product

1267 that:

1268 (a) after taking into account any renewals or extensions, has a total duration of no more

1269 than 36 months; and

1270 (b) has an expiration date specified in the contract that is less than 12 months after the

1271 original effective date of coverage under the health benefit product.

1272            [~~(165)~~] (173) "Significant break in coverage" means a period of 63 consecutive days  
1273 during each of which an individual does not have creditable coverage.

1274            [~~(166)~~] (174) (a) "Small employer" means, in connection with a health benefit plan and  
1275 with respect to a calendar year and to a plan year, an employer who:

1276            (i) (A) employed at least one but not more than 50 eligible employees on business days  
1277 during the preceding calendar year; or

1278            (B) if the employer did not exist for the entirety of the preceding calendar year,  
1279 reasonably expects to employ an average of at least one but not more than 50 eligible  
1280 employees on business days during the current calendar year;

1281            (ii) employs at least one employee on the first day of the plan year; and

1282            (iii) for an employer who has common ownership with one or more other employers, is  
1283 treated as a single employer under 26 U.S.C. Sec. 414(b), (c), (m), or (o).

1284            (b) "Small employer" does not include a sole proprietor that does not employ at least  
1285 one employee.

1286            [~~(167)~~] (175) "Special enrollment period," in connection with a health benefit plan, has  
1287 the same meaning as provided in federal regulations adopted pursuant to the Health Insurance  
1288 Portability and Accountability Act.

1289            [~~(168)~~] (176) (a) "Subsidiary" of a person means an affiliate controlled by that person  
1290 either directly or indirectly through one or more affiliates or intermediaries.

1291            (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting  
1292 shares are owned by that person either alone or with its affiliates, except for the minimum  
1293 number of shares the law of the subsidiary's domicile requires to be owned by directors or  
1294 others.

1295            [~~(169)~~] (177) Subject to Subsection [~~(90)~~] (91)(b), "surety insurance" includes:

1296            (a) a guarantee against loss or damage resulting from the failure of a principal to pay or  
1297 perform the principal's obligations to a creditor or other obligee;

1298            (b) bail bond insurance; and

1299            (c) fidelity insurance.

1300            [~~(170)~~] (178) (a) "Surplus" means the excess of assets over the sum of paid-in capital  
1301 and liabilities.

1302            (b) (i) "Permanent surplus" means the surplus of an insurer or organization that is

1303 designated by the insurer or organization as permanent.

1304 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-205 require  
1305 that insurers or organizations doing business in this state maintain specified minimum levels of  
1306 permanent surplus.

1307 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the  
1308 same as the minimum required capital requirement that applies to stock insurers.

1309 (c) "Excess surplus" means:

1310 (i) for a life insurer, accident and health insurer, health organization, or property and  
1311 casualty insurer as defined in Section 31A-17-601, the lesser of:

1312 (A) that amount of an insurer's or health organization's total adjusted capital that  
1313 exceeds the product of:

1314 (I) 2.5; and

1315 (II) the sum of the insurer's or health organization's minimum capital or permanent  
1316 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1317 (B) that amount of an insurer's or health organization's total adjusted capital that  
1318 exceeds the product of:

1319 (I) 3.0; and

1320 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1321 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer  
1322 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1323 (A) 1.5; and

1324 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1325 ~~[(171)]~~ (179) "Third party administrator" or "administrator" means a person who  
1326 collects charges or premiums from, or who, for consideration, adjusts or settles claims of  
1327 residents of the state in connection with insurance coverage, annuities, or service insurance  
1328 coverage, except:

1329 (a) a union on behalf of its members;

1330 (b) a person administering a:

1331 (i) pension plan subject to the federal Employee Retirement Income Security Act of  
1332 1974;

1333 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

- 1334 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
- 1335 (c) an employer on behalf of the employer's employees or the employees of one or
- 1336 more of the subsidiary or affiliated corporations of the employer;
- 1337 (d) an insurer licensed under the following, but only for a line of insurance for which
- 1338 the insurer holds a license in this state:
- 1339 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- 1340 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;
- 1341 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- 1342 (iv) Chapter 9, Insurance Fraternal; or
- 1343 (v) Chapter 14, Foreign Insurers;
- 1344 (e) a person:
- 1345 (i) licensed or exempt from licensing under:
- 1346 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
- 1347 Reinsurance Intermediaries; or
- 1348 (B) Chapter 26, Insurance Adjusters; and
- 1349 (ii) whose activities are limited to those authorized under the license the person holds
- 1350 or for which the person is exempt; or
- 1351 (f) an institution, bank, or financial institution:
- 1352 (i) that is:
- 1353 (A) an institution whose deposits and accounts are to any extent insured by a federal
- 1354 deposit insurance agency, including the Federal Deposit Insurance Corporation or National
- 1355 Credit Union Administration; or
- 1356 (B) a bank or other financial institution that is subject to supervision or examination by
- 1357 a federal or state banking authority; and
- 1358 (ii) that does not adjust claims without a third party administrator license.
- 1359 [~~(172)~~] (180) "Title insurance" means the insuring, guaranteeing, or indemnifying of an
- 1360 owner of real or personal property or the holder of liens or encumbrances on that property, or
- 1361 others interested in the property against loss or damage suffered by reason of liens or
- 1362 encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity
- 1363 or unenforceability of any liens or encumbrances on the property.
- 1364 [~~(173)~~] (181) "Total adjusted capital" means the sum of an insurer's or health

1365 organization's statutory capital and surplus as determined in accordance with:

1366 (a) the statutory accounting applicable to the annual financial statements required to be  
1367 filed under Section 31A-4-113; and

1368 (b) another item provided by the RBC instructions, as RBC instructions is defined in  
1369 Section 31A-17-601.

1370 ~~[(174)]~~ (182) (a) "Trustee" means "director" when referring to the board of directors of  
1371 a corporation.

1372 (b) "Trustee," when used in reference to an employee welfare fund, means an  
1373 individual, firm, association, organization, joint stock company, or corporation, whether acting  
1374 individually or jointly and whether designated by that name or any other, that is charged with  
1375 or has the overall management of an employee welfare fund.

1376 ~~[(175)]~~ (183) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted  
1377 insurer" means an insurer:

1378 (i) not holding a valid certificate of authority to do an insurance business in this state;

1379 or

1380 (ii) transacting business not authorized by a valid certificate.

1381 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1382 (i) holding a valid certificate of authority to do an insurance business in this state; and

1383 (ii) transacting business as authorized by a valid certificate.

1384 ~~[(176)]~~ (184) "Underwrite" means the authority to accept or reject risk on behalf of the  
1385 insurer.

1386 ~~[(177)]~~ (185) "Vehicle liability insurance" means insurance against liability resulting  
1387 from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a  
1388 vehicle comprehensive or vehicle physical damage coverage under Subsection ~~[(145)]~~ (152).

1389 ~~[(178)]~~ (186) "Voting security" means a security with voting rights, and includes a  
1390 security convertible into a security with a voting right associated with the security.

1391 ~~[(179)]~~ (187) "Waiting period" for a health benefit plan means the period that must  
1392 pass before coverage for an individual, who is otherwise eligible to enroll under the terms of  
1393 the health benefit plan, can become effective.

1394 ~~[(180)]~~ (188) "Workers' compensation insurance" means:

1395 (a) insurance for indemnification of an employer against liability for compensation

1396 based on:

1397 (i) a compensable accidental injury; and

1398 (ii) occupational disease disability;

1399 (b) employer's liability insurance incidental to workers' compensation insurance and  
1400 written in connection with workers' compensation insurance; and

1401 (c) insurance assuring to a person entitled to workers' compensation benefits the  
1402 compensation provided by law.

1403 Section 2. Section **31A-2-403** is amended to read:

1404 **31A-2-403. Title and Escrow Commission created.**

1405 (1) (a) Subject to Subsection (1)(b), there is created within the department the Title and  
1406 Escrow Commission that is comprised of five members appointed by the governor with the  
1407 consent of the Senate as follows:

1408 (i) except as provided in Subsection (1)(c), two members shall be employees of a title  
1409 insurer;

1410 (ii) two members shall:

1411 (A) be employees of a Utah agency title insurance producer;

1412 (B) be or have been licensed under the title insurance line of authority;

1413 (C) as of the day on which the member is appointed, be or have been licensed with the  
1414 title examination or escrow subline of authority for at least five years; and

1415 (D) as of the day on which the member is appointed, not be from the same county as  
1416 another member appointed under this Subsection (1)(a)(ii); and

1417 (iii) one member shall be a member of the general public from any county in the state.

1418 (b) No more than one commission member may be appointed from a single company  
1419 or an affiliate or subsidiary of the company.

1420 (c) If the governor is unable to identify more than one individual who is an employee  
1421 of a title insurer and willing to serve as a member of the commission, the commission shall  
1422 include the following members in lieu of the members described in Subsection (1)(a)(i):

1423 (i) one member who is an employee of a title insurer; and

1424 (ii) one member who is an employee of a Utah agency title insurance producer.

1425 (2) (a) Subject to Subsection (2)(c), a commission member shall file with the  
1426 commissioner a disclosure of any position of employment or ownership interest that the

1427 commission member has with respect to a person that is subject to the jurisdiction of the  
1428 commissioner.

1429 (b) The disclosure statement required by this Subsection (2) shall be:

1430 (i) filed by no later than the day on which the person begins that person's appointment;

1431 and

1432 (ii) amended when a significant change occurs in any matter required to be disclosed  
1433 under this Subsection (2).

1434 (c) A commission member is not required to disclose an ownership interest that the  
1435 commission member has if the ownership interest is in a publicly traded company or held as  
1436 part of a mutual fund, trust, or similar investment.

1437 (3) (a) Except as required by Subsection (3)(b), as terms of current commission  
1438 members expire, the governor shall appoint each new commission member to a four-year term  
1439 ending on June 30.

1440 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the  
1441 time of appointment, adjust the length of terms to ensure that the terms of the commission  
1442 members are staggered so that approximately half of the members appointed under Subsection  
1443 (1)(a)(i) and half of the members appointed under Subsection (1)(a)(ii) are appointed every two  
1444 years.

1445 (c) A commission member may not serve more than one consecutive term.

1446 (d) When a vacancy occurs in the membership for any reason, the governor, with the  
1447 consent of the Senate, shall appoint a replacement for the unexpired term.

1448 (e) Notwithstanding the other provisions of this Subsection (3), a commission member  
1449 serves until a successor is appointed by the governor with the consent of the Senate.

1450 (4) A commission member may not receive compensation or benefits for the  
1451 commission member's service, but may receive per diem and travel expenses in accordance  
1452 with:

1453 (a) Section 63A-3-106;

1454 (b) Section 63A-3-107; and

1455 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
1456 63A-3-107.

1457 (5) Members of the commission shall annually select one commission member to serve

1458 as chair.

1459 (6) (a) (i) The commission shall meet at least [~~monthly~~] quarterly.

1460 (ii) Notwithstanding Section 52-4-207, a commission member shall physically attend a  
1461 regularly scheduled [~~monthly~~] quarterly meeting of the commission and may not attend through  
1462 electronic means.

1463 (iii) A commission member may attend subcommittee meetings, emergency meetings,  
1464 or other not regularly scheduled meetings electronically in accordance with Section 52-4-207.

1465 (b) The commissioner may call additional meetings:

1466 (i) at the commissioner's discretion;

1467 (ii) upon the request of the chair of the commission; or

1468 (iii) upon the written request of three or more commission members.

1469 (c) (i) Three commission members constitute a quorum for the transaction of business.

1470 (ii) The action of a majority of the commission members when a quorum is present is  
1471 the action of the commission.

1472 (7) The commissioner shall staff the commission.

1473 Section 3. Section **31A-16-108.6** is enacted to read:

1474 **31A-16-108.6. Supervision of internationally active insurance groups.**

1475 (1) (a) Except as otherwise provided in this section, the commissioner shall act as the  
1476 group-wide supervisor for each internationally active insurance group.

1477 (b) In lieu of acting as the group-wide supervisor for an internationally active insurance  
1478 company, the commissioner may acknowledge a regulatory official from another jurisdiction as  
1479 the internationally active insurance group's group-wide supervisor, if:

1480 (i) the internationally active insurance group does not have substantial insurance  
1481 operations in the United States;

1482 (ii) the internationally active insurance group does not have substantial insurance  
1483 operations in the state; or

1484 (iii) in accordance with the provisions of this section, the commissioner determines  
1485 that the regulatory official is an appropriate group-wide supervisor.

1486 (2) In deciding whether to acknowledge another regulatory official as an internationally  
1487 active insurance group's group-wide supervisor in lieu of acting as the group-wide supervisor,  
1488 the commissioner shall:

- 1489 (a) consult and cooperate with other state, federal, and international regulatory  
1490 agencies; and
- 1491 (b) consider:
- 1492 (i) the domicile of the insurer or insurers within the internationally active insurance  
1493 group that hold the largest share of the group's written premiums, assets, or liabilities;
- 1494 (ii) the domicile of the top-tiered insurer or insurers in the insurance holding company  
1495 system of the internationally active insurance group;
- 1496 (iii) the location of the executive office or largest operational office of the  
1497 internationally active insurance group;
- 1498 (iv) whether another regulatory official acts or seeks to act as the group-wide  
1499 supervisor under a regulatory system that the commissioner determines to be:
- 1500 (A) substantially similar to the system of regulation provided under the laws of this  
1501 state; or
- 1502 (B) sufficient in terms of providing for group-wide supervision, enterprise risk  
1503 analysis, and cooperation with other regulatory officials; and
- 1504 (v) whether another regulatory official acting or seeking to act as the group-wide  
1505 supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.
- 1506 (3) (a) Before acting as the group-wide supervisor for an internationally active  
1507 insurance group, the commissioner shall notify:
- 1508 (i) the insurer registered under Section 31A-16-105; and
- 1509 (ii) the ultimate controlling person within the internationally active insurance group.
- 1510 (b) Within 30 days after the day on which an internationally active insurance group  
1511 receives a notification described in Subsection (3)(a), the internationally active insurance group  
1512 may provide the commissioner additional information relevant to whether the commissioner  
1513 should act as the internationally active insurance group's group-wide supervisor.
- 1514 (4) If the commissioner acts as the group-wide supervisor for an internationally active  
1515 insurance group, the commissioner may later acknowledge a regulatory official from another  
1516 jurisdiction as the group-wide supervisor for the internationally active insurance group if the  
1517 commissioner:
- 1518 (a) considers the factors described in Subsection (2)(b);
- 1519 (b) cooperates with other regulatory officials involved with the supervision of the

1520 members of the internationally active insurance group; and  
1521 (c) consults with the internationally active insurance group.  
1522 (5) Notwithstanding any other provision of law, when a regulatory official from  
1523 another jurisdiction is acting as the group-wide supervisor for an internationally active  
1524 insurance group, the commissioner shall:  
1525 (a) acknowledge the regulatory official as the group-wide supervisor; and  
1526 (b) in accordance with Subsection (2), reevaluate whether it is appropriate to  
1527 acknowledge a regulatory official from another jurisdiction as the group-wide supervisor if a  
1528 change in circumstances results in:  
1529 (i) the insurer or insurers within the internationally active insurance group that hold the  
1530 largest share of the group's written premiums, assets, or liabilities being domiciled in the state;  
1531 or  
1532 (ii) the top-tiered insurer or insurers in the insurance holding company system of the  
1533 internationally active insurance group being domiciled in the state.  
1534 (6) In accordance with Section 31A-16-107.5, upon request from the commissioner, an  
1535 insurer subject to this chapter shall provide the commissioner any information necessary to  
1536 determine the appropriate group-wide supervisor for an internationally active insurance group.  
1537 (7) The commissioner shall publish on the department's website the identity of each  
1538 internationally active insurance group for which the commissioner acts as the group-wide  
1539 supervisor.  
1540 (8) If the commissioner is the group-wide supervisor of an internationally active  
1541 insurance group, the commissioner may:  
1542 (a) assess the enterprise risks within the internationally active insurance group to  
1543 ensure that:  
1544 (i) management of the internationally active insurance group identifies the material  
1545 financial condition and liquidity risks to the members of the internationally active insurance  
1546 group that are engaged in the business of insurance; and  
1547 (ii) reasonable and effective mitigation measures are in place;  
1548 (b) request, from any member of the internationally active insurance group,  
1549 information necessary and appropriate to assess enterprise risk, including information about the  
1550 members of the internationally active insurance group regarding:

- 1551 (i) governance, risk assessment, and management;  
1552 (ii) capital adequacy; or  
1553 (iii) material intercompany transactions;  
1554 (c) coordinate and, through the authority of the regulatory officials of the jurisdictions  
1555 where members of the internationally active insurance group are domiciled, compel  
1556 development and implementation of reasonable measures designed to ensure that the  
1557 internationally active insurance group is able to timely recognize and mitigate enterprise risks  
1558 to members of the internationally active insurance group that are engaged in the business of  
1559 insurance;  
1560 (d) communicate with other state, federal, and international regulatory agencies for  
1561 members within the internationally active insurance group;  
1562 (e) subject to the confidentiality provisions of Section 31A-16-109, share relevant  
1563 information:  
1564 (i) through a supervisory college in accordance with Section 31A-16-108.5; or  
1565 (ii) by entering into an agreement or obtaining documentation:  
1566 (A) with or from an insurer registered under Section 31A-16-105, a member of the  
1567 internationally active insurance group, or a state, federal or international regulatory agency for  
1568 members of the internationally active insurance group; and  
1569 (B) that provides the basis for or otherwise clarifies the commissioner's role as  
1570 group-wide supervisor, including a provision for resolving disputes with another regulatory  
1571 official; and  
1572 (f) engage in any other group-wide supervision activity, consistent with an authority  
1573 and purpose enumerated in this section, as the commissioner determines necessary.  
1574 (9) An agreement or documentation described in Subsection (8)(e) may not serve as  
1575 evidence in any proceeding that an insurer or person within an insurance holding company  
1576 system not domiciled or incorporated in the state:  
1577 (a) is doing business in the state; or  
1578 (b) is subject to jurisdiction in the state.  
1579 (10) (a) If the commissioner acknowledges as a group-wide supervisor another  
1580 regulatory official from a jurisdiction that the NAIC does not accredit as a group-wide  
1581 supervisor, the commissioner may reasonably cooperate, through supervisory colleges or

1582 otherwise, the group-wide supervisor, provided that:

1583 (i) the commissioner's cooperation is in compliance with the laws of this state; and

1584 (ii) the group-wide supervisor also recognizes and cooperates with the commissioner's  
 1585 activities as the group-wide supervisor for other internationally active insurance groups where  
 1586 applicable.

1587 (b) Where the recognition and cooperation described in Subsection (10)(a)(ii) is not  
 1588 reasonably reciprocal, the commissioner may refuse recognition and cooperation.

1589 (11) The commissioner may in accordance with Title 63G, Chapter 3, Utah  
 1590 Administrative Rulemaking Act, make rules necessary for the administration of this section.

1591 (12) An insurer subject to this section is liable for and shall pay the reasonable  
 1592 expenses of the commissioner's participation in the administration of this section, including:

1593 (a) the engagement of an attorney, actuary, or other professional; and

1594 (b) all reasonable travel expenses.

1595 Section 4. Section **31A-16-109** is amended to read:

1596 **31A-16-109. Confidentiality of information obtained by commissioner.**

1597 (1) (a) [~~Information, documents, and copies of these that are~~] Documents, materials, or  
 1598 information obtained by or disclosed to the commissioner or any other person in the course of  
 1599 an examination or investigation made under Section 31A-16-107.5, and all information  
 1600 reported or provided to the department under Section 31A-16-105 or 31A-16-108.6, is  
 1601 confidential. [~~It is~~]

1602 (b) Any confidential document, material, or information described in Subsection (1)(a)  
 1603 is not subject to subpoena and may not be made public by the commissioner or any other  
 1604 person without the permission of the insurer, except [~~it~~] the confidential document, material, or  
 1605 information may be provided to the insurance departments of other states, without the prior  
 1606 written consent of the insurer to which [~~it~~] the confidential document, material, or information  
 1607 pertains.

1608 (2) The commissioner and any person who [~~received~~] receives documents, materials, or  
 1609 other information while acting under the authority of the commissioner or with whom the  
 1610 documents, materials, or other information are shared pursuant to this chapter shall keep  
 1611 confidential any confidential documents, materials, or information subject to Subsection (1).

1612 (3) (a) To assist in the performance of the commissioner's duties, the commissioner:

1613 (i) may share documents, materials, or other information, including the confidential  
1614 documents, materials, or information subject to Subsection (1), with the following if the  
1615 recipient agrees in writing to maintain the confidentiality status of the document, material, or  
1616 other information, and has verified in writing the legal authority to maintain confidentiality:

1617 (A) ~~[other]~~ a state, federal, ~~[and]~~ or international regulatory ~~[agencies]~~ agency;

1618 (B) the National Association of Insurance Commissioners ~~[and its affiliates and~~  
1619 ~~subsidiaries, and]~~ or an NAIC affiliate or subsidiary; or

1620 (C) a state, federal, ~~[and]~~ or international law enforcement ~~[authorities]~~ authority,  
1621 including ~~[members]~~ a member of a supervisory college described in Section 31A-16-108.5;

1622 (ii) notwithstanding Subsection (1), may only share confidential documents, material,  
1623 or information reported pursuant to Section 31A-16-105 or 31A-16-108.6 with ~~[commissioners~~  
1624 ~~of states]~~ a commissioner of a state having statutes or regulations substantially similar to  
1625 Subsection (1) and who ~~[have]~~ has agreed in writing not to disclose the documents, material, or  
1626 information;

1627 (iii) may receive documents, materials, or information, including otherwise  
1628 confidential documents, materials, or information from:

1629 (A) the National Association of Insurance Commissioners ~~[and its affiliates and~~  
1630 ~~subsidiaries and from]~~ or an NAIC affiliate or subsidiary; or

1631 (B) a regulatory ~~[and]~~ or law enforcement ~~[officials]~~ official of ~~[other]~~ a foreign or  
1632 domestic ~~[jurisdictions, and]~~ jurisdiction;

1633 (iv) shall maintain as confidential any document, material, or information received  
1634 under this section with notice or the understanding that it is confidential under the laws of the  
1635 jurisdiction that is the source of the document, material, or information; and

1636 ~~[(iv)]~~ (v) shall enter into written agreements with the National Association of Insurance  
1637 Commissioners governing sharing and use of information provided pursuant to this chapter  
1638 consistent with this Subsection (3) that shall:

1639 (A) specify procedures and protocols regarding the confidentiality and security of  
1640 information shared with the National Association of Insurance Commissioners and ~~[its]~~ NAIC  
1641 affiliates and subsidiaries pursuant to this chapter, including procedures and protocols for  
1642 sharing by the National Association of Insurance Commissioners with other state, federal, or  
1643 international regulators;

1644 (B) specify that ownership of information shared with the National Association of  
1645 Insurance Commissioners and [its] NAIC affiliates and subsidiaries pursuant to this chapter  
1646 remains with the commissioner and the National Association of Insurance Commissioner's use  
1647 of the information is subject to the direction of the commissioner;

1648 (C) require prompt notice to be given to an insurer whose confidential information in  
1649 the possession of the National Association of Insurance Commissioners pursuant to this chapter  
1650 is subject to a request or subpoena to the National Association of Insurance Commissioners for  
1651 disclosure or production; and

1652 (D) require the National Association of Insurance Commissioners and [its] NAIC  
1653 affiliates and subsidiaries to consent to intervention by an insurer in any judicial or  
1654 administrative action in which the National Association of Insurance Commissioners and [its]  
1655 NAIC affiliates and subsidiaries may be required to disclose confidential information about the  
1656 insurer shared with the National Association of Insurance Commissioners and [its] NAIC  
1657 affiliates and subsidiaries pursuant to this chapter.

1658 (4) The sharing of information by the commissioner pursuant to this chapter does not  
1659 constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely  
1660 responsible for the administration, execution, and enforcement of this chapter.

1661 (5) A waiver of any applicable claim of confidentiality in the documents, materials, or  
1662 information does not occur as a result of disclosure to the commissioner under this section or  
1663 as a result of sharing as authorized in Subsection (3).

1664 (6) Documents, materials, or other information in the possession or control of the  
1665 National Association of Insurance Commissioners pursuant to this chapter are:

1666 (a) confidential, not public records, and not open to public inspection; and

1667 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management  
1668 Act.

1669 Section 5. Section **31A-16b-101** is enacted to read:

1670 **CHAPTER 16b. CORPORATE GOVERNANCE ANNUAL DISCLOSURE ACT**

1671 **31A-16b-101. Title.**

1672 This chapter is known as the "Corporate Governance Annual Disclosure Act."

1673 Section 6. Section **31A-16b-102** is enacted to read:

1674 **31A-16b-102. Administration and scope.**

1675 (1) The commissioner is solely responsible for the administration and enforcement of  
1676 the provisions of this chapter.

1677 (2) This chapter does not:

1678 (a) prescribe or impose corporate governance standards or internal procedures beyond  
1679 what is required under applicable state corporate law; or

1680 (b) limit the commissioner's authority, or the rights or obligations of third parties,  
1681 under Chapter 2, Administration of the Insurance Laws.

1682 (3) The requirements of this Chapter apply to each insurer domiciled in the state.

1683 Section 7. Section **31A-16b-103** is enacted to read:

1684 **31A-16b-103. Disclosure requirement.**

1685 (1) An insurer, or the insurance group of which the insurer is a member, shall on or  
1686 before June 1 of each year submit to the commissioner a corporate governance annual  
1687 disclosure that contains the information required under Section 31A-16b-105.

1688 (2) Notwithstanding a request from the commissioner described in Subsection (4), if an  
1689 insurer is a member of an insurance group, the insurer shall submit the report required under  
1690 this section to the commissioner of the lead state for the insurance group in accordance with:

1691 (a) the laws of the lead state; and

1692 (b) the procedures outlined in the most recent Financial Analysis Handbook adopted by  
1693 the NAIC.

1694 (3) The corporate governance annual disclosure described in Subsection (1) shall  
1695 include a signature:

1696 (a) of the insurer's or insurance group's chief executive officer or corporate secretary;

1697 and

1698 (b) attesting to the best of the signatory's belief and knowledge that:

1699 (i) the insurer or insurance group has implemented the corporate governance practices;

1700 and

1701 (ii) a copy of the disclosure has been provided to the insurer's or insurance group's  
1702 board of directors or the appropriate committee thereof.

1703 (4) An insurer not required to submit a corporate governance annual disclosure under  
1704 this section shall submit a corporate governance annual disclosure to the commissioner upon  
1705 the commissioner's request.

1706 (5) (a) For purposes of completing a corporate governance annual disclosure, an insurer  
1707 or insurance group may provide information regarding corporate governance at one of the  
1708 following levels:

1709 (i) at the ultimate controlling parent level;

1710 (ii) at an intermediate holding company level; or

1711 (iii) at the individual legal entity level.

1712 (b) An insurer or insurance group shall consider making each corporate governance  
1713 annual disclosure at the level at which the insurer or insurance group:

1714 (i) determines the insurer or insurance group's risk appetite;

1715 (ii) (A) collectively oversees the earnings, capital, liquidity, operations, and reputation  
1716 of the insurer; and

1717 (B) coordinates and exercises the supervision of earnings, capital, liquidity, operations,  
1718 and reputation of the insurer; or

1719 (iii) places legal liability for failure of general corporate governance duties.

1720 (6) If an insurer or insurance group chooses a level of reporting described in  
1721 Subsection (5), it shall indicate:

1722 (a) which of the three levels the insurer or insurance group chose; and

1723 (b) explain any subsequent change in the level of reporting.

1724 (7) An insurer may choose not to include certain information in a corporate governance  
1725 annual disclosure, if:

1726 (a) the information is substantially similar to information included in another document  
1727 submitted to the commissioner, including a proxy statement filed in conjunction with Section  
1728 31A-16-105 or another state or federal filing provided to the department; and

1729 (b) the insurer cross references the document described in Subsection (7)(a) in the  
1730 corporate governance annual disclosure.

1731 Section 8. Section **31A-16b-104** is enacted to read:

1732 **31A-16b-104. Rulemaking.**

1733 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1734 commissioner may make rules to implement and administer this chapter.

1735 (2) The commissioner may issue orders as is necessary to carry out this chapter.

1736 Section 9. Section **31A-16b-105** is enacted to read:

1737 **31A-16b-105. Contents of corporate governance annual disclosure.**

1738 (1) A corporate governance annual disclosure shall include information sufficient to  
1739 provide the commissioner a clear understanding of the insurer's or insurance group's:

1740 (a) corporate governance policies;

1741 (b) reporting or information systems; and

1742 (c) controls implementing a policy or system described in this Subsection (1).

1743 (2) After receiving a corporate governance annual disclosure, the commissioner may  
1744 request additional information from the insurer or insurance group that the commissioner  
1745 considers material and necessary to understanding the items described in Subsection (1).

1746 (3) An insurer or insurance group shall maintain and make available upon request of  
1747 the commissioner:

1748 (a) documentation; or

1749 (b) supporting information.

1750 Section 10. Section **31A-16b-106** is enacted to read:

1751 **31A-16b-106. Confidentiality.**

1752 (1) A document, material, or other information is considered proprietary and to contain  
1753 a trade secret if the document, material, or other information is:

1754 (a) in the control or possession of the department; and

1755 (b) obtained by, created by, or disclosed in accordance with this chapter.

1756 (2) A document, material, or other information described in Subsection (1) is:

1757 (a) confidential and privileged;

1758 (b) classified as a protected record under Title 63G, Chapter 2, Government Records

1759 Access and Management Act;

1760 (c) not subject to:

1761 (i) subpoena; or

1762 (ii) discovery; and

1763 (d) not admissible as evidence in any private civil action.

1764 (3) (a) The commissioner may use a document, material, or other information  
1765 described in Subsection (1) in the furtherance of a regulatory or legal action brought as a part of  
1766 the commissioner's duties.

1767 (b) Except as described in Subsection (3)(a), the commissioner may not make a

1768 document, material, or other information described in Subsection (1) public without the prior  
1769 written consent of the insurer or insurance group.

1770 (4) Nothing in this section requires written consent of the insurer or insurance group  
1771 before the commissioner shares or receives, in accordance with Subsection (6), a document,  
1772 material, or other information described in Subsection (1) to assist in the performance of the  
1773 commissioner's duties.

1774 (5) The following may not testify in any private civil action regarding a document,  
1775 material, or other information described in Subsection (1):

1776 (a) the commissioner; or

1777 (b) a person:

1778 (i) who receives the document, material, or other information, through examination or  
1779 otherwise, while acting under the authority of the commissioner; or

1780 (ii) with whom the document, material, or other information is shared in accordance  
1781 with this chapter.

1782 (6) To carry out the commissioner's duties, the commissioner may:

1783 (a) upon request, share a document, material, or other information described in  
1784 Subsection (1) with:

1785 (i) a state, federal, or international financial regulatory agency, including a member of a  
1786 supervisory college as defined in Section 31A-16-108.5; or

1787 (ii) the NAIC or a third-party consultant retained in accordance with Section  
1788 31A-16b-107, if the recipient:

1789 (A) agrees in writing to maintain the confidentiality and privileged status of the  
1790 document, material, or other information; and

1791 (B) verifies in writing the legal authority to maintain confidentiality; or

1792 (b) receive documents, materials, or other information related to a corporate  
1793 governance annual disclosure, including:

1794 (i) otherwise confidential and privileged documents, materials, or other information;

1795 and

1796 (ii) proprietary and trade secret information or documents from:

1797 (A) a regulatory official of a state, federal, or international financial regulatory agency,

1798 including a member of a supervisory college as defined in Section 31A-16-108.5; or

1799           (B) the NAIC.

1800           (7) A written agreement to share a document, material, or other information described  
1801 in Subsection (1) with the NAIC or a third-party consultant shall contain the following:

1802           (a) specific procedures and protocols for maintaining the confidentiality and privileged  
1803 status of the document, material, or other information in accordance with this chapter:

1804           (b) procedures and protocols ensuring the NAIC shares information only with a state  
1805 regulator from a state in which the insurance group has a domiciled insurer;

1806           (c) verification that the recipient has legal authority to maintain the confidentiality and  
1807 privileged status of the document, material, or other information;

1808           (d) a provision specifying that:

1809           (i) ownership of the document, material, or other information remains with the  
1810 department; and

1811           (ii) the NAIC's or third-party consultant's use of the document, material, or other  
1812 information shared with the NAIC or third-party consultant is subject to the direction of the  
1813 commissioner;

1814           (e) a provision prohibiting the NAIC or third-party consultant from storing the  
1815 document, material, or other information in a permanent database after the underlying analysis  
1816 is complete;

1817           (f) a provision requiring the NAIC or third-party consultant to provide prompt notice to  
1818 the commissioner and to the insurer or insurance group regarding any subpoena, request for  
1819 disclosure, or request for production of the document, material, or other information;

1820           (g) a provision requiring the NAIC or third-party consultant consent to the insurer or  
1821 insurance group intervening in any judicial or administrative action in which the NAIC or  
1822 third-party consultant may be required to disclose the document, material, or other information;  
1823 and

1824           (h) a provision requiring the written consent of the insurer or insurance group before  
1825 making public the document, material, or other information.

1826           (8) The commissioner shall maintain as confidential or privileged any documents,  
1827 materials, or other information received with notice or with the understanding that it is  
1828 confidential or privileged under the laws of the jurisdiction that is the source of the document,  
1829 material, or other information.

1830 (9) The sharing of a document, material, or other information by the commissioner in  
1831 accordance with this chapter is not a delegation of regulatory authority or rulemaking.

1832 (10) Disclosing or sharing a document, material, or other information in accordance  
1833 with this chapter does not waive any privilege or claim of confidentiality related to the  
1834 document, material, or other information.

1835 Section 11. Section **31A-16b-107** is enacted to read:

1836 **31A-16b-107. Third-party consultants.**

1837 (1) The commissioner may retain a third-party consultant, including an attorney,  
1838 actuary, accountant, or other expert not otherwise a part of the commissioner's staff:

1839 (a) at the insurer's or insurance group's expense; and

1840 (b) as is reasonably necessary to assist the commissioner in reviewing the insurer's or  
1841 insurance group's:

1842 (i) corporate governance annual disclosure and related information; or

1843 (ii) compliance with this chapter.

1844 (2) A person the commissioner retains under Subsection (1):

1845 (a) is under the direction and control of the commissioner; and

1846 (b) shall act in a purely advisory capacity.

1847 (3) A third-party consultant is subject to the same confidentiality standards and  
1848 requirements as the commissioner.

1849 (4) As part of the retention process, a third-party consultant shall verify to the  
1850 commissioner, with notice to the insurer or insurance group, that the third-party consultant:

1851 (a) is free of a conflict of interest; and

1852 (b) has internal procedures in place to:

1853 (i) monitor compliance with Subsection (4)(a); and

1854 (ii) comply with the confidentiality standards and requirements of this chapter.

1855 Section 12. Section **31A-16b-108** is enacted to read:

1856 **31A-16b-108. Penalties.**

1857 (1) An insurer or insurance group that, without just cause, fails to timely file a  
1858 corporate governance annual disclosure as required in this chapter shall, after notice and  
1859 hearing, pay a penalty of \$10,000 for each day's delay, up to \$300,000.

1860 (2) Any penalty recovered by the commissioner under this section shall be deposited

1861 into the General Fund.

1862 (3) The commissioner may reduce a penalty under this section if the insurer or  
1863 insurance group demonstrates to the commissioner that the imposition of the penalty would  
1864 constitute a financial hardship to the insurer.

1865 Section 13. Section **31A-17-519** is amended to read:

1866 **31A-17-519. Small company exemption.**

1867 (1) A company that is licensed and doing business in Utah, and whose reserves are  
1868 computed subject to the requirements of Subsection 31A-17-502(2), in lieu of the reserves  
1869 required under Sections 31A-17-514 and 31A-17-515, may hold reserves for ordinary life  
1870 insurance policies issued directly, or assumed, during the current calendar year, based on the  
1871 mortality tables and interest rates defined by the valuation manual for net premium reserves  
1872 and using the methodology defined in Sections 31A-17-507 through 31A-17-512 as they apply  
1873 to ordinary life insurance [~~in lieu of the reserves required by Sections 31A-17-514 and~~  
1874 ~~31A-17-515~~], provided that all of the following conditions have been met:

1875 (a) the company has less than \$300,000,000 of ordinary life premium;

1876 (b) if the company is a member of a group of life insurers, the group has combined  
1877 ordinary life premiums of less than \$600,000,000;

1878 [~~(c) the company reported total adjusted capital of at least 450% of Authorized Control~~  
1879 ~~Level Risk Based Capital in the risk-based capital report for the prior calendar year;~~]

1880 [~~(d)~~] (c) the appointed actuary has provided an unqualified opinion on the reserves in  
1881 accordance with Subsection 31A-17-503(2) for the prior calendar year;

1882 [~~(e) the company has provided a certification by a qualified actuary that~~] (d) any  
1883 universal life policy with a secondary guarantee issued on or after [~~the operative date of the~~  
1884 ~~valuation manual~~] January 1, 2020, and in force on the company's annual financial statement  
1885 for the current calendar year-end valuation date, only has secondary guarantees that meets the  
1886 definition of a [~~non-material~~] non material secondary guarantee [~~universal life product~~] as  
1887 defined in the valuation manual;

1888 [~~(f)~~] (e) the company has filed by July 1 of the calendar year for which valuation under  
1889 Subsection 31A-17-502(2) is required a statement with its domiciliary commissioner certifying  
1890 that these conditions are met and that the company intends to calculate reserves as described in  
1891 this section; and

1892           ~~(g)~~ (f) the company's domiciliary commissioner has not informed the company in  
1893 writing before September 1 of the calendar year for which valuation under Subsection  
1894 31A-17-502(2) is required that the company must comply with the valuation manual  
1895 requirements for life insurance reserves.

1896           (2) For purposes of Subsections (1)(a) and (b), ordinary life premiums are measured as  
1897 direct premium plus reinsurance assumed from an unaffiliated company, as reported in the  
1898 prior calendar year annual statement, excluding premiums for guaranteed issue policies and  
1899 pre-need life contracts and excluding amounts that represent the transfer of reserves in-force as  
1900 of the effective date of a reinsurance assumed transaction.

1901           Section 14. Section **31A-21-201** is amended to read:

1902           **31A-21-201. Filing of forms.**

1903           (1) (a) Except as exempted under Subsections 31A-21-101(2) through (6), a form may  
1904 not be used, sold, or offered for sale until the form is filed with the commissioner.

1905           (b) A form is considered filed with the commissioner when the commissioner receives:

1906           (i) the form;

1907           (ii) the applicable filing fee as prescribed under Section 31A-3-103; and

1908           (iii) the applicable transmittal forms as required by the commissioner.

1909           (2) In filing a form for use in this state the insurer is responsible for assuring that the  
1910 form is in compliance with this title and rules adopted by the commissioner.

1911           (3) (a) The commissioner may prohibit the use of a form at any time upon a finding  
1912 that:

1913           (i) the form:

1914           (A) is inequitable;

1915           (B) is unfairly discriminatory;

1916           (C) is misleading;

1917           (D) is deceptive;

1918           (E) is obscure;

1919           (F) is unfair;

1920           (G) encourages misrepresentation; or

1921           (H) is not in the public interest;

1922           (ii) the form provides benefits or contains another provision that endangers the solidity

1923 of the insurer;

1924 (iii) except an application required by Section 31A-22-635, the form is an insurance  
1925 policy or application for an insurance policy that fails to conspicuously, as defined by rule,  
1926 provide:

1927 (A) the exact name of the insurer;

1928 (B) the state of domicile of the insurer filing the insurance policy or application for the  
1929 insurance policy; and

1930 (C) for a life insurance and annuity insurance policy only, the address of the  
1931 administrative office of the insurer filing the insurance policy or application for the insurance  
1932 policy;

1933 (iv) the form violates a statute or a rule adopted by the commissioner; or

1934 (v) the form is otherwise contrary to law.

1935 [~~(b)~~ Subsection (3)(a)(iii) does not apply to an endorsement to an insurance policy.]

1936 [~~(c)~~] (b) (i) When the commissioner prohibits the use of a form under Subsection (3)(a),  
1937 the commissioner may order that, on or before a date not less than 15 days after the order, the  
1938 use of the form be discontinued.

1939 (ii) Once use of a form is prohibited, the form may not be used until appropriate  
1940 changes are filed with and reviewed by the commissioner.

1941 (iii) When the commissioner prohibits the use of a form under Subsection (3)(a), the  
1942 commissioner may require the insurer to disclose contract deficiencies to the existing  
1943 policyholders.

1944 [~~(d)~~] (c) If the commissioner prohibits use of a form under this Subsection (3), the  
1945 prohibition shall:

1946 (i) be in writing;

1947 (ii) constitute an order; and

1948 (iii) state the reasons for the prohibition.

1949 (4) (a) If, after a hearing, the commissioner determines that it is in the public interest,  
1950 the commissioner may require by rule or order that a form be subject to the commissioner's  
1951 approval before its use.

1952 (b) The rule or order described in Subsection (4)(a) shall prescribe the filing  
1953 procedures for a form if the procedures are different from the procedures stated in this section.

1954 (c) The type of form that under Subsection (4)(a) the commissioner may require  
 1955 approval of before use includes:

1956 (i) a form for a particular class of insurance;

1957 (ii) a form for a specific line of insurance;

1958 (iii) a specific type of form; or

1959 (iv) a form for a specific market segment.

1960 (5) (a) An insurer shall maintain a complete and accurate record of the following for  
 1961 the time period described in Subsection (5)(b):

1962 (i) a form:

1963 (A) filed under this section for use; or

1964 (B) that is in use; and

1965 (ii) a document filed under this section with a form described in Subsection (5)(a)(i).

1966 (b) The insurer shall maintain a record required under Subsection (5)(a) for the balance  
 1967 of the current year, plus five years from:

1968 (i) the last day on which the form is used; or

1969 (ii) the last day an insurance policy that is issued using the form is in effect.

1970 Section 15. Section **31A-21-311** is amended to read:

1971 **31A-21-311. Delivery of policy or certificate.**

1972 (1) (a) An insurer issuing an individual or group life insurance policy or an accident  
 1973 and health insurance policy shall deliver a copy of the policy to the policyholder as soon as  
 1974 practicable but no later than 90 days after the day on which the coverage is effective.

1975 (b) The policy described in this Subsection (1) shall:

1976 (i) provide the exact name of the insurer; and

1977 (ii) state the state of domicile of the insurer.

1978 ~~[(+)]~~ (2) (a) (i) Except under Subsection ~~[(+)]~~ (2)(d), an insurer issuing a group  
 1979 insurance policy other than a blanket insurance policy shall, as soon as practicable after the  
 1980 coverage is effective, but no later than 90 days after the day on which the coverage is effective,  
 1981 provide a certificate for each member of the insured group, except that only one certificate need  
 1982 be provided for the members of a family unit.

1983 (ii) The certificate ~~[required by]~~ described in this Subsection ~~[(+)]~~ (2) shall:

1984 (A) provide the exact name of the insurer;

- 1985 (B) state the state of domicile of the insurer; and
- 1986 (C) contain a summary of the essential features of the insurance coverage, including:
- 1987 (I) any rights of conversion to an individual policy;
- 1988 (II) in the case of group life insurance, any continuation of coverage during total
- 1989 disability; and
- 1990 (III) in the case of group life insurance, the incontestability provision.
- 1991 (iii) Upon receiving a written request, the insurer shall inform any insured how the
- 1992 insured may inspect, during normal business hours at a place reasonably convenient to the
- 1993 insured:
- 1994 (A) a copy of the policy; or
- 1995 (B) a summary of the policy containing all the details that are relevant to the certificate
- 1996 holder.
- 1997 (b) The commissioner may by rule impose a requirement similar to Subsection [~~(1)~~]
- 1998 (2)(a) on any class of blanket insurance policies for which the commissioner finds that the
- 1999 group of persons covered is constant enough for that type of action to be practicable and not
- 2000 unreasonably expensive.
- 2001 (c) (i) A certificate shall be provided in a manner reasonably calculated to bring the
- 2002 certificate to the attention of the certificate holder.
- 2003 (ii) The insurer may deliver or mail a certificate:
- 2004 (A) directly to the certificate holders; or
- 2005 (B) in bulk to the policyholder to transmit to certificate holders.
- 2006 (iii) An affidavit by the insurer that the insurer mailed the certificates in the usual
- 2007 course of business creates a rebuttable presumption that the insurer has mailed the certificate
- 2008 to:
- 2009 (A) a certificate holder; or
- 2010 (B) a policyholder as provided in Subsection [~~(1)~~] (2)(c)(ii)(B).
- 2011 (d) The commissioner may by rule or order prescribe substitutes for delivery or mailing
- 2012 of certificates that are reasonably calculated to inform a certificate holder of the certificate
- 2013 holder's rights, including:
- 2014 (i) booklets describing the coverage;
- 2015 (ii) the posting of notices in the place of business; or

2016 (iii) publication in a house organ.  
 2017 [~~2~~] (3) Unless a policy, certificate or an authorized substitute has been made available  
 2018 to the policyholder or certificate holder, as applicable, when required by this section, an act or  
 2019 omission forbidden to or required of the policyholder or certificate holder by the policy or  
 2020 certificate after the coverage has become effective as to the policyholder or certificate holder,  
 2021 other than intentionally causing the loss insured against or failing to make required  
 2022 contributory premium payments, may not affect the insurer's obligations under the insurance  
 2023 contract.

2024 Section 16. Section **31A-21-313** is amended to read:

2025 **31A-21-313. Limitation of actions.**

2026 (1) (a) An action on a written policy or contract of first party insurance shall be  
 2027 commenced within three years after the inception of the loss.

2028 (b) The inception of the loss on a fidelity bond is the date the insurer first denies all or  
 2029 part of a claim made under the fidelity bond.

2030 (2) Except as provided in Subsection (1) or elsewhere in this title, the law applicable to  
 2031 limitation of actions in Title 78B, Chapter 2, Statutes of Limitations, applies to actions on  
 2032 insurance policies.

2033 (3) An insurance policy may not:

2034 (a) limit the time for beginning an action on the policy to a time less than that  
 2035 authorized by statute;

2036 (b) prescribe in what court an action may be brought on the policy; or

2037 (c) provide that no action may be brought, subject to permissible arbitration provisions  
 2038 in contracts.

2039 (4) Unless by verified complaint it is alleged that prejudice to the complainant will  
 2040 arise from a delay in bringing suit against an insurer, which prejudice is other than the delay  
 2041 itself, no action may be brought against an insurer on an insurance policy to compel payment  
 2042 under the policy until the earlier of:

2043 (a) 60 days after proof of loss has been furnished as required under the policy;

2044 (b) waiver by the insurer of proof of loss; or

2045 (c) the insurer's denial of [~~full~~] payment.

2046 (5) The period of limitation is tolled during the period in which the parties conduct an

2047 appraisal or arbitration procedure prescribed by the insurance policy, by law, or as agreed to by  
2048 the parties.

2049 Section 17. Section **31A-22-501** is amended to read:

2050 **31A-22-501. Eligible groups.**

2051 A group or blanket policy of life insurance may not be delivered in Utah unless the  
2052 insured group:

2053 (1) falls within at least one of the classifications under Sections 31A-22-501.1 through  
2054 31A-22-509; and

2055 (2) is formed [~~for a reason other than the purchase of insurance~~] and maintained in  
2056 good faith for purposes other than obtaining insurance.

2057 Section 18. Section **31A-22-605.1** is amended to read:

2058 **31A-22-605.1. Preexisting condition limitations.**

2059 (1) Any provision dealing with preexisting conditions shall be consistent with this  
2060 section, Section 31A-22-609, and rules adopted by the commissioner.

2061 (2) Except as provided in this section, an insurer that elects to use an application form  
2062 without questions concerning the insured's health or medical treatment history shall provide  
2063 coverage under the policy for any loss which occurs more than 12 months after the effective  
2064 date of coverage due to a preexisting condition which is not specifically excluded from  
2065 coverage.

2066 (3) (a) An insurer that issues a specified disease policy may not deny a claim for loss  
2067 due to a preexisting condition that occurs more than six months after the effective date of  
2068 coverage.

2069 (b) A specified disease policy may impose a preexisting condition exclusion only if the  
2070 exclusion relates to a preexisting condition which first manifested itself within six months prior  
2071 to the effective date of coverage or which was diagnosed by a physician at any time prior to the  
2072 effective date of coverage.

2073 (4) (a) Except as [~~provided in this Subsection (4)~~] otherwise provided in this section, a  
2074 health benefit plan may impose a preexisting condition exclusion only if:

2075 (i) the exclusion relates to a preexisting condition for which medical advice, diagnosis,  
2076 care, or treatment was recommended or received within the six-month period ending on the  
2077 enrollment date from an individual licensed or similarly authorized to provide those services

2078 under state law and operating within the scope of practice authorized by state law;

2079 (ii) the exclusion period ends no later than 12 months after the enrollment date, or in  
2080 the case of a late enrollee, 18 months after the enrollment date; and

2081 (iii) the exclusion period is reduced by the number of days of creditable coverage the  
2082 enrollee has as of the enrollment date, in accordance with Subsection (4)(b).

2083 (b) (i) The amount of creditable coverage allowed under Subsection (4)(a)(iii) is  
2084 determined by counting all the days on which the individual has one or more types of creditable  
2085 coverage.

2086 (ii) Days of creditable coverage that occur before a significant break in coverage are  
2087 not required to be counted.

2088 (A) Days in a waiting period or affiliation period are not taken into account in  
2089 determining whether a significant break in coverage has occurred.

2090 (B) For an individual who elects federal COBRA continuation coverage during the  
2091 second election period provided under the federal Trade Act of 2002, the days between the date  
2092 the individual lost group health plan coverage and the first day of the second COBRA election  
2093 period are not taken into account in determining whether a significant break in coverage has  
2094 occurred.

2095 (c) A group health benefit plan may not impose a preexisting condition exclusion  
2096 relating to pregnancy.

2097 (d) (i) An insurer imposing a preexisting condition exclusion shall provide a written  
2098 general notice of preexisting condition exclusion as part of any written application materials.

2099 (ii) The general notice under this subsection shall include:

2100 (A) a description of the existence and terms of any preexisting condition exclusion  
2101 under the plan, including the six-month period ending on the enrollment date, the maximum  
2102 preexisting condition exclusion period, and how the insurer will reduce the maximum  
2103 preexisting condition exclusion period by creditable coverage;

2104 (B) a description of the rights of individuals:

2105 (I) to demonstrate creditable coverage, including any applicable waiting periods,  
2106 through a certificate of creditable coverage or through other means; and

2107 (II) to request a certificate of creditable coverage from a prior plan;

2108 (C) a statement that the current plan will assist in obtaining a certificate of creditable

2109 coverage from any prior plan or issuer if necessary; and

2110 (D) a person to contact, and an address and telephone number for the person, for  
2111 obtaining additional information or assistance regarding the preexisting condition exclusion.

2112 (e) An insurer may not impose any limit on the amount of time that an individual has to  
2113 present a certificate or other evidence of creditable coverage.

2114 (f) This Subsection (4) does not preclude application of any waiting period applicable  
2115 to all new enrollees under the plan.

2116 (5) (a) If a short-term limited duration health insurance policy provides for an  
2117 extension or renewal of the policy, the insurer may not exclude coverage for a loss due to a  
2118 preexisting condition for a period greater than 12 months following the original effective date  
2119 of the policy, unless the insurer specifically and expressly excludes the preexisting condition in  
2120 the terms of the policy or certificate.

2121 (b) (i) An insurer that includes a preexisting condition exclusion in a short-term limited  
2122 duration health insurance policy in accordance with this subsection shall provide a written  
2123 general notice of the preexisting condition exclusion as part of any written application  
2124 materials.

2125 (ii) A written general notice described in this subsection shall:

2126 (A) include a description of the existence and terms of any preexisting condition  
2127 exclusion under the policy, including the maximum preexisting exclusion period; and

2128 (B) state that the exclusion period ends no later than 12 months after the original  
2129 effective date of the policy.

2130 Section 19. Section **31A-22-611** is amended to read:

2131 **31A-22-611. Coverage for children with a disability.**

2132 (1) For the purposes of this section:

2133 (a) "Dependent with a disability" means a child who is and continues to be both:

2134 (i) unable to engage in substantial gainful employment to the degree that the child can  
2135 achieve economic independence due to a medically determinable physical or mental  
2136 impairment which can be expected to result in death, or which has lasted or can be expected to  
2137 last for a continuous period of not less than 12 months; and

2138 (ii) chiefly dependent upon an insured for support and maintenance since the child  
2139 reached the age specified in Subsection 31A-22-610.5(2).

2140 (b) "Mental impairment" means a mental or psychological disorder such as:

2141 (i) an intellectual disability;

2142 (ii) organic brain syndrome;

2143 (iii) emotional or mental illness; or

2144 (iv) specific learning disabilities as determined by the insurer.

2145 (c) "Physical impairment" means a physiological disorder, condition, or disfigurement,  
2146 or anatomical loss affecting one or more of the following body systems:

2147 (i) neurological;

2148 (ii) musculoskeletal;

2149 (iii) special sense organs;

2150 (iv) respiratory organs;

2151 (v) speech organs;

2152 (vi) cardiovascular;

2153 (vii) reproductive;

2154 (viii) digestive;

2155 (ix) genito-urinary;

2156 (x) hemic and lymphatic;

2157 (xi) skin; or

2158 (xii) endocrine.

2159 (2) The insurer may require proof of the [~~incapacity~~] impairment and dependency be  
2160 furnished by the person insured under the policy within 30 days of the effective date or the date  
2161 the child attains the age specified in Subsection 31A-22-610.5(2), and at any time thereafter,  
2162 except that the insurer may not require proof more often than annually after the two-year period  
2163 immediately following attainment of the limiting age by the dependent with a disability.

2164 (3) Any individual or group accident and health insurance policy or health maintenance  
2165 organization contract that provides coverage for a policyholder's or certificate holder's  
2166 dependent shall, upon application, provide coverage for all unmarried dependents with a  
2167 disability who have been continuously covered, with no break of more than 63 days, under any  
2168 accident and health insurance since the age specified in Subsection 31A-22-610.5(2).

2169 (4) Every accident and health insurance policy or contract that provides coverage of a  
2170 dependent with a disability may not terminate the policy due to an age limitation.

2171 Section 20. Section **31A-22-627** is amended to read:

2172 **31A-22-627. Coverage of emergency medical services.**

2173 (1) A health insurance policy or managed care organization contract:

2174 (a) shall provide, at a minimum, coverage of emergency services as required in 29

2175 C.F.R. Sec. 2590.715-2719A; and

2176 (b) may not:

2177 (i) require any form of preauthorization for treatment of an emergency medical

2178 condition until after the insured's condition has been stabilized; or

2179 (ii) deny a claim for any covered evaluation, covered diagnostic test, or other covered

2180 treatment considered medically necessary to stabilize the emergency medical condition of an

2181 insured.

2182 (2) A health insurance policy or managed care organization contract may require

2183 authorization for the continued treatment of an emergency medical condition after the insured's

2184 condition has been stabilized. If such authorization is required, an insurer who does not accept

2185 or reject a request for authorization may not deny a claim for any evaluation, diagnostic testing,

2186 or other treatment considered medically necessary that occurred between the time the request

2187 was received and the time the insurer rejected the request for authorization.

2188 (3) For purposes of this section:

2189 (a) "Emergency medical condition" means a medical condition manifesting itself by

2190 acute symptoms of sufficient severity, including severe pain, such that a prudent layperson,

2191 who possesses an average knowledge of medicine and health, would reasonably expect the

2192 absence of immediate medical attention [at] through a hospital emergency department to result

2193 in:

2194 (i) placing the insured's health, or with respect to a pregnant woman, the health of the  
2195 woman or her unborn child, in serious jeopardy;

2196 (ii) serious impairment to bodily functions; or

2197 (iii) serious dysfunction of any bodily organ or part.

2198 (b) "Hospital emergency department" means that area of a hospital in which emergency

2199 services are provided on a 24-hour-a-day basis.

2200 (c) "Stabilize" means the same as that term is defined in 42 U.S.C. Sec. 1395dd(e)(3).

2201 (4) Nothing in this section may be construed as:

2202 (a) altering the level or type of benefits that are provided under the terms of a contract  
2203 or policy; or

2204 (b) restricting a policy or contract from providing enhanced benefits for certain  
2205 emergency medical conditions that are identified in the policy or contract.

2206 (5) Notwithstanding Section 31A-2-308, if the commissioner finds an insurer has  
2207 violated this section, the commissioner may:

2208 (a) work with the insurer to improve the insurer's compliance with this section; or

2209 (b) impose the following fines:

2210 (i) not more than \$5,000; or

2211 (ii) twice the amount of any profit gained from violations of this section.

2212 Section 21. Section **31A-22-638** is amended to read:

2213 **31A-22-638. Coverage for prosthetic devices.**

2214 (1) For purposes of this section:

2215 (a) "Orthotic device" means a rigid or semirigid device supporting a weak or deformed  
2216 leg, foot, arm, hand, back, or neck, or restricting or eliminating motion in a diseased or injured  
2217 leg, foot, arm, hand, back, or neck.

2218 (b) (i) "Prosthetic device" means an artificial limb device or appliance designed to  
2219 replace in whole or in part an arm or a leg.

2220 (ii) "Prosthetic device" does not include an orthotic device.

2221 (2) (a) Beginning January 1, 2011, an insurer, other than an insurer described in  
2222 Subsection (2)(b), that provides a health benefit plan shall offer at least one plan, in each  
2223 market where the insurer offers a health benefit plan, that provides coverage for benefits for  
2224 prosthetics that includes:

2225 (i) a prosthetic device;

2226 (ii) all services and supplies necessary for the effective use of a prosthetic device,  
2227 including:

2228 (A) formulating its design;

2229 (B) fabrication;

2230 (C) material and component selection;

2231 (D) measurements and fittings;

2232 (E) static and dynamic alignments; and

2233 (F) instructing the patient in the use of the prosthetic device;  
2234 (iii) all materials and components necessary to use the prosthetic device; and  
2235 (iv) any repair or replacement of a prosthetic device that is determined medically  
2236 necessary to restore or maintain the ability to complete activities of daily living or essential  
2237 job-related activities and that is not solely for comfort or convenience.

2238 (b) Beginning January 1, 2011, an insurer that is subject to Title 49, Chapter 20, Public  
2239 Employees' Benefit and Insurance Program Act, shall offer to a covered employer at least one  
2240 plan that:

2241 (i) provides coverage for prosthetics that complies with Subsections (2)(a)(i) through  
2242 (iv); and

2243 (ii) requires an employee who elects to purchase the coverage described in Subsection  
2244 (2)(b)(i) to pay an increased premium to pay the costs of obtaining that coverage.

2245 (c) At least one of the plans with the prosthetic benefits described in Subsections (2)(a)  
2246 and (b) that is offered by an insurer described in this Subsection (2) shall have a coinsurance  
2247 rate, that applies to physical injury generally and to prosthetics, of 80% to be paid by the  
2248 insurer and 20% to be paid by the insured, if the prosthetic benefit is obtained from a person  
2249 that the insurer contracts with or approves.

2250 (d) For policies issued on or after July 1, 2010 until July 1, 2015, an insurer is exempt  
2251 from the 30% index rating restrictions in Section 31A-30-106.1, and for the first year only that  
2252 coverage under this section is chosen, the 15% annual adjustment restriction in Section  
2253 31A-30-106.1, for any small employer with 20 or less enrolled employees who chooses  
2254 coverage that meets or exceeds the coverage under this section.

2255 (3) The coverage described in this section:

2256 (a) shall, except as otherwise provided in this section, be made subject to cost-sharing  
2257 provisions, including dollar limits, deductibles, copayments, and co-insurance, that are not less  
2258 favorable to the insured than the cost-sharing provisions of the health benefit plan that apply to  
2259 physical illness generally; and

2260 (b) may limit coverage for the purchase, repair, or replacement of a microprocessor  
2261 component for a prosthetic device to \$30,000, per limb, every three years.

2262 (4) If the coverage described in this section is provided through a managed care plan,  
2263 offered under Chapter ~~8, Health Maintenance Organizations and Limited Health Plans, or~~

2264 ~~under a preferred provider plan under this chapter,]~~ 45, Managed Care Organizations, the  
2265 insured shall have access to medically necessary prosthetic clinical care, and to prosthetic  
2266 devices and technology, from one or more prosthetic providers in the managed care plan's  
2267 provider network.

2268 Section 22. Section **31A-22-701** is amended to read:

2269 **31A-22-701. Groups eligible for group or blanket insurance.**

2270 (1) As used in this section, "association group" means a lawfully formed association of  
2271 individuals or business entities that:

2272 (a) purchases insurance on a group basis on behalf of members; and

2273 (b) is formed and maintained in good faith for purposes other than obtaining insurance.

2274 (2) A group accident and health insurance policy may be issued to:

2275 (a) a group:

2276 (i) to which a group life insurance policy may be issued under Section 31A-22-502,  
2277 31A-22-503, 31A-22-504, 31A-22-506, or 31A-22-507; and

2278 (ii) that is formed and maintained in good faith for a purpose other than obtaining  
2279 insurance;

2280 (b) an association group authorized by the commissioner that:

2281 (i) has been actively in existence for at least five years;

2282 (ii) has a constitution and bylaws;

2283 (iii) has a shared or common purpose that is not primarily a business or customer  
2284 relationship;

2285 (iv) is formed and maintained in good faith for purposes other than obtaining  
2286 insurance;

2287 (v) does not condition membership in the association group on any health status-related  
2288 factor relating to an individual, including an employee of an employer or a dependent of an  
2289 employee;

2290 (vi) makes accident and health insurance coverage offered through the association  
2291 group available to all members regardless of any health status-related factor relating to the  
2292 members or individuals eligible for coverage through a member;

2293 (vii) does not make accident and health insurance coverage offered through the  
2294 association group available other than in connection with a member of the association group;

2295 and  
2296 (viii) is actuarially sound; or  
2297 (c) a group specifically authorized by the commissioner, upon a finding that:  
2298 (i) authorization is not contrary to the public interest;  
2299 (ii) the group is actuarially sound;  
2300 (iii) formation of the proposed group may result in economies of scale in acquisition,  
2301 administrative, marketing, and brokerage costs;  
2302 (iv) the insurance policy, insurance certificate, or other indicia of coverage that will be  
2303 offered to the proposed group is substantially equivalent to insurance policies that are  
2304 otherwise available to similar groups;  
2305 (v) the group would not present hazards of adverse selection;  
2306 (vi) the premiums for the insurance policy and any contributions by or on behalf of the  
2307 insured persons are reasonable in relation to the benefits provided; and  
2308 (vii) the group is formed and maintained in good faith for a purpose other than  
2309 obtaining insurance.  
2310 (3) A blanket accident and health insurance policy:  
2311 (a) covers a defined class of persons;  
2312 (b) may not be offered or underwritten on an individual basis;  
2313 (c) shall cover only a group that is:  
2314 (i) actuarially sound; and  
2315 (ii) formed and maintained in good faith for a purpose other than obtaining insurance;  
2316 and  
2317 (d) may be issued only to:  
2318 (i) a common carrier or an operator, owner, or lessee of a means of transportation, as  
2319 policyholder, covering persons who may become passengers as defined by reference to the  
2320 person's travel status;  
2321 (ii) an employer, as policyholder, covering any group of employees, dependents, or  
2322 guests, as defined by reference to specified hazards incident to any activities of the  
2323 policyholder;  
2324 (iii) an institution of learning, including a school district, a school jurisdictional unit, or  
2325 the head, principal, or governing board of a school jurisdictional unit, as policyholder, covering

2326 students, teachers, or employees;

2327 (iv) a religious, charitable, recreational, educational, or civic organization, or branch of  
 2328 one of those organizations, as policyholder, covering a group of members or participants as  
 2329 defined by reference to specified hazards incident to the activities sponsored or supervised by  
 2330 the policyholder;

2331 (v) a sports team, camp, or sponsor of a sports team or camp, as policyholder, covering  
 2332 members, campers, employees, officials, or supervisors;

2333 (vi) a volunteer fire department, first aid, civil defense, or other similar volunteer  
 2334 organization, as policyholder, covering a group of members or participants as defined by  
 2335 reference to specified hazards incident to activities sponsored, supervised, or participated in by  
 2336 the policyholder;

2337 (vii) a newspaper or other publisher, as policyholder, covering its carriers;

2338 (viii) a labor union, as a policyholder, covering a group of members or participants as  
 2339 defined by reference to specified hazards incident to the activities or operations sponsored or  
 2340 supervised by the policyholder;

2341 [~~(viii)~~] (ix) an association[~~, including a labor union,~~] that has a constitution and bylaws  
 2342 [~~and that is organized in good faith for purposes other than that of obtaining insurance, as~~  
 2343 ~~policyholder,~~] covering a group of members or participants as defined by reference to specified  
 2344 hazards incident to the activities or operations sponsored or supervised by the policyholder;

2345 [~~and~~] or

2346 [~~(ix)~~] (x) any other class of risks that, in the judgment of the commissioner, may be  
 2347 properly eligible for blanket accident and health insurance.

2348 (4) The judgment of the commissioner may be exercised on the basis of:

2349 (a) individual risks;

2350 (b) a class of risks; or

2351 (c) both Subsections (4)(a) and (b).

2352 Section 23. Section **31A-22-722** is amended to read:

2353 **31A-22-722. Utah mini-COBRA benefits for employer group coverage.**

2354 (1) An [~~insured may extend the~~] employer's group policy shall offer an employee's  
 2355 coverage to be extended under the current employer's group policy for a period of 12 months,  
 2356 except as provided in Subsection (2). The right to extend coverage includes:

- 2357 (a) voluntary termination;
- 2358 (b) involuntary termination;
- 2359 (c) retirement;
- 2360 (d) death;
- 2361 (e) divorce or legal separation;
- 2362 (f) loss of dependent status;
- 2363 (g) sabbatical;
- 2364 (h) a disability;
- 2365 (i) leave of absence; or
- 2366 (j) reduction of hours.
- 2367 (2) (a) Notwithstanding Subsection (1), an employee may not extend coverage under
- 2368 the current employer's group insurance policy if the employee:
- 2369 (i) fails to pay premiums or contributions in accordance with the terms of the insurance
- 2370 policy;
- 2371 (ii) acquires other group coverage covering all preexisting conditions including
- 2372 maternity, if the coverage exists;
- 2373 (iii) performs an act or practice that constitutes fraud in connection with the coverage;
- 2374 (iv) makes an intentional misrepresentation of material fact under the terms of the
- 2375 coverage;
- 2376 (v) is terminated from employment for gross misconduct;
- 2377 (vi) is not continuously covered under the current employer's group policy for a period
- 2378 of three months immediately before the termination of the insurance policy due to an event set
- 2379 forth in Subsection (1);
- 2380 (vii) is eligible for an extension of coverage required by federal law;
- 2381 (viii) establishes residence outside of this state;
- 2382 (ix) moves out of the insurer's service area;
- 2383 (x) is eligible for similar coverage under another group insurance policy; or
- 2384 (xi) has the employee's coverage terminated because the employer's coverage is
- 2385 terminated, except as provided in Subsection (8).
- 2386 (b) The right to extend coverage under Subsection (1) applies to spouse or dependent
- 2387 coverage, including a surviving spouse or dependents whose coverage under the insurance

2388 policy terminates by reason of the death of the employee or member.

2389 (3) (a) The employer shall notify the following in writing of the right to extend group  
2390 coverage and the payment amounts required for extension of coverage, including the manner,  
2391 place, and time in which the payments shall be made:

2392 (i) a terminated insured;

2393 (ii) an ex-spouse of an insured; or

2394 (iii) if Subsection (2)(b) applies:

2395 (A) a surviving spouse; and

2396 (B) the guardian of surviving dependents, if different from a surviving spouse.

2397 (b) The notification required in Subsection (3)(a) shall be sent first class mail within 30  
2398 days after the termination date of the group coverage to:

2399 (i) the terminated insured's home address as shown on the records of the employer;

2400 (ii) the address of the surviving spouse, if different from the insured's address and if  
2401 shown on the records of the employer;

2402 (iii) the guardian of any dependents address, if different from the insured's address, and  
2403 if shown on the records of the employer; and

2404 (iv) the address of the ex-spouse, if shown on the records of the employer.

2405 (4) The insurer shall provide the employee, spouse, or any eligible dependent the  
2406 opportunity to extend the group coverage at the payment amount stated in Subsection (5) if:

2407 (a) the employer policyholder does not provide the terminated insured the written  
2408 notification required by Subsection (3)(a); and

2409 (b) the employee or other individual eligible for extension contacts the insurer within  
2410 60 days of coverage termination.

2411 (5) (a) A premium amount for extended group coverage may not exceed 102% of the  
2412 group rate in effect for a group member, including an employer's contribution, if any, for a  
2413 group insurance policy.

2414 (b) Except as provided in Subsection (5)(a), an insurer may not charge an insured an  
2415 additional fee, an additional premium, interest, or any similar charge for electing extended  
2416 group coverage.

2417 (6) Except as provided in this Subsection (6), coverage extends without interruption for  
2418 12 months and may not terminate if the terminated insured or, with respect to a minor, the

2419 parent or guardian of the terminated insured:

2420 (a) elects to extend group coverage within 60 days of losing group coverage; and

2421 (b) tenders the amount required to the employer or insurer.

2422 (7) The insured's coverage may be terminated before 12 months if the terminated

2423 insured:

2424 (a) establishes residence outside of this state;

2425 (b) moves out of the insurer's service area;

2426 (c) fails to pay premiums or contributions in accordance with the terms of the insurance

2427 policy, including any timeliness requirements;

2428 (d) performs an act or practice that constitutes fraud in connection with the coverage;

2429 (e) makes an intentional misrepresentation of material fact under the terms of the

2430 coverage;

2431 (f) becomes eligible for similar coverage under another group insurance policy; or

2432 (g) has the coverage terminated because the employer's coverage is terminated, except

2433 as provided in Subsection (8).

2434 (8) If the current employer coverage is terminated and the employer replaces coverage

2435 with similar coverage under another group insurance policy, without interruption, the

2436 terminated insured, spouse, or the surviving spouse and guardian of dependents if Subsection

2437 (2)(b) applies, may obtain extension of coverage under the replacement group insurance policy:

2438 (a) for the balance of the period the terminated insured would have extended coverage

2439 under the replaced group insurance policy; and

2440 (b) if the terminated insured is otherwise eligible for extension of coverage.

2441 (9) An insurer shall require an insured employer to offer to the following individuals an

2442 open enrollment period at the same time as other regular employees:

2443 (a) an individual who extends group coverage and is current on payment; and

2444 (b) during the applicable grace period described in Subsection (3) or (4), an individual

2445 who is eligible to elect to extend group coverage.

2446 Section 24. Section **31A-22-726** is amended to read:

2447 **31A-22-726. Abortion coverage restriction in health benefit plan and on health**

2448 **insurance exchange.**

2449 (1) As used in this section, "permitted abortion coverage" means coverage for abortion:

- 2450 (a) that is necessary to avert:
- 2451 (i) the death of the woman on whom the abortion is performed; or
- 2452 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
- 2453 of the woman on whom the abortion is performed;
- 2454 (b) of a fetus that has a defect that is documented by a physician or physicians to be
- 2455 uniformly diagnosable and uniformly lethal; or
- 2456 (c) where the woman is pregnant as a result of:
- 2457 (i) rape, as described in Section 76-5-402;
- 2458 (ii) rape of a child, as described in Section 76-5-402.1; or
- 2459 (iii) incest, as described in Subsection 76-5-406(10) or Section 76-7-102.
- 2460 (2) A person may not offer coverage for an abortion in a health benefit plan, unless the
- 2461 coverage is a type of permitted abortion coverage.

2462 ~~[(3) A person may not offer a health benefit plan that provides coverage for an abortion~~

2463 ~~in a health insurance exchange created under Title 63N, Chapter 11, Health System Reform~~

2464 ~~Act, unless the coverage is a type of permitted abortion coverage.]~~

2465 [(4)] (3) A person may not offer a health benefit plan that provides coverage for an

2466 abortion in a health insurance exchange created under the federal Patient Protection and

2467 Affordable Care Act, 111 P.L. 148, unless the coverage is a type of permitted abortion

2468 coverage.

2469 Section 25. Section **31A-23a-111** is amended to read:

2470 **31A-23a-111. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**

2471 **terminating a license -- Forfeiture -- Rulemaking for renewal or reinstatement.**

- 2472 (1) A license type issued under this chapter remains in force until:
- 2473 (a) revoked or suspended under Subsection (5);
- 2474 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
- 2475 administrative action;
- 2476 (c) the licensee dies or is adjudicated incompetent as defined under:
- 2477 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
- 2478 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
- 2479 Minors;
- 2480 (d) lapsed under Section 31A-23a-113; or

- 2481 (e) voluntarily surrendered.
- 2482 (2) The following may be reinstated within one year after the day on which the license  
2483 is no longer in force:
- 2484 (a) a lapsed license; or
- 2485 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may  
2486 not be reinstated after the license period in which the license is voluntarily surrendered.
- 2487 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a  
2488 license, submission and acceptance of a voluntary surrender of a license does not prevent the  
2489 department from pursuing additional disciplinary or other action authorized under:
- 2490 (a) this title; or
- 2491 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah  
2492 Administrative Rulemaking Act.
- 2493 (4) A line of authority issued under this chapter remains in force until:
- 2494 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;  
2495 or
- 2496 (b) the supporting license type:
- 2497 (i) is revoked or suspended under Subsection (5);
- 2498 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of  
2499 administrative action;
- 2500 (iii) lapses under Section 31A-23a-113; or
- 2501 (iv) is voluntarily surrendered; or
- 2502 (c) the licensee dies or is adjudicated incompetent as defined under:
- 2503 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
- 2504 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and  
2505 Minors.
- 2506 (5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an  
2507 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the  
2508 commissioner may:
- 2509 (i) revoke:
- 2510 (A) a license; or
- 2511 (B) a line of authority;

- 2512 (ii) suspend for a specified period of 12 months or less:
- 2513 (A) a license; or
- 2514 (B) a line of authority;
- 2515 (iii) limit in whole or in part:
- 2516 (A) a license; or
- 2517 (B) a line of authority;
- 2518 (iv) deny a license application;
- 2519 (v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or
- 2520 (vi) take a combination of actions under Subsections (5)(a)(i) through (iv) and
- 2521 Subsection (5)(a)(v).
- 2522 (b) The commissioner may take an action described in Subsection (5)(a) if the
- 2523 commissioner finds that the licensee:
- 2524 (i) is unqualified for a license or line of authority under Section 31A-23a-104,
- 2525 31A-23a-105, or 31A-23a-107;
- 2526 (ii) violates:
- 2527 (A) an insurance statute;
- 2528 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 2529 (C) an order that is valid under Subsection 31A-2-201(4);
- 2530 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
- 2531 delinquency proceedings in any state;
- 2532 (iv) fails to pay a final judgment rendered against the person in this state within 60
- 2533 days after the day on which the judgment became final;
- 2534 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 2535 admitted insurers;
- 2536 (vi) is affiliated with and under the same general management or interlocking
- 2537 directorate or ownership as another insurance producer that transacts business in this state
- 2538 without a license;
- 2539 (vii) refuses:
- 2540 (A) to be examined; or
- 2541 (B) to produce its accounts, records, and files for examination;
- 2542 (viii) has an officer who refuses to:

- 2543 (A) give information with respect to the insurance producer's affairs; or  
2544 (B) perform any other legal obligation as to an examination;  
2545 (ix) provides information in the license application that is:  
2546 (A) incorrect;  
2547 (B) misleading;  
2548 (C) incomplete; or  
2549 (D) materially untrue;  
2550 (x) violates an insurance law, valid rule, or valid order of another regulatory agency in  
2551 any jurisdiction;  
2552 (xi) obtains or attempts to obtain a license through misrepresentation or fraud;  
2553 (xii) improperly withholds, misappropriates, or converts money or properties received  
2554 in the course of doing insurance business;  
2555 (xiii) intentionally misrepresents the terms of an actual or proposed:  
2556 (A) insurance contract;  
2557 (B) application for insurance; or  
2558 (C) life settlement;  
2559 (xiv) [~~is~~] has been convicted of:  
2560 (A) a felony; or  
2561 (B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;  
2562 (xv) admits or is found to have committed an insurance unfair trade practice or fraud;  
2563 (xvi) in the conduct of business in this state or elsewhere:  
2564 (A) uses fraudulent, coercive, or dishonest practices; or  
2565 (B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;  
2566 (xvii) has had an insurance license or other professional or occupational license, or an  
2567 equivalent to an insurance license or registration, or other professional or occupational license  
2568 or registration:  
2569 (A) denied;  
2570 (B) suspended;  
2571 (C) revoked; or  
2572 (D) surrendered to resolve an administrative action;  
2573 (xviii) forges another's name to:

- 2574 (A) an application for insurance; or  
2575 (B) a document related to an insurance transaction;  
2576 (xix) improperly uses notes or another reference material to complete an examination  
2577 for an insurance license;  
2578 (xx) knowingly accepts insurance business from an individual who is not licensed;  
2579 (xxi) fails to comply with an administrative or court order imposing a child support  
2580 obligation;  
2581 (xxii) fails to:  
2582 (A) pay state income tax; or  
2583 (B) comply with an administrative or court order directing payment of state income  
2584 tax;  
2585 (xxiii) ~~[violates or permits others to violate]~~ has been convicted of violating the federal  
2586 Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and [therefore  
2587 under] has not obtained written consent to engage in the business of insurance or participate in  
2588 such business as required by 18 U.S.C. Sec. 1033 [is prohibited from engaging in the business  
2589 of insurance; or];  
2590 (xxiv) engages in a method or practice in the conduct of business that endangers the  
2591 legitimate interests of customers and the public[-]; or  
2592 (xxv) has been convicted of any criminal felony involving dishonesty or breach of trust  
2593 and has not obtained written consent to engage in the business of insurance or participate in  
2594 such business as required by 18 U.S.C. Sec. 1033.  
2595 (c) For purposes of this section, if a license is held by an agency, both the agency itself  
2596 and any individual designated under the license are considered to be the holders of the license.  
2597 (d) If an individual designated under the agency license commits an act or fails to  
2598 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,  
2599 the commissioner may suspend, revoke, or limit the license of:  
2600 (i) the individual;  
2601 (ii) the agency, if the agency:  
2602 (A) is reckless or negligent in its supervision of the individual; or  
2603 (B) knowingly participates in the act or failure to act that is the ground for suspending,  
2604 revoking, or limiting the license; or

- 2605 (iii) (A) the individual; and  
2606 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).  
2607 (6) A licensee under this chapter is subject to the penalties for acting as a licensee  
2608 without a license if:
- 2609 (a) the licensee's license is:
    - 2610 (i) revoked;
    - 2611 (ii) suspended;
    - 2612 (iii) limited;
    - 2613 (iv) surrendered in lieu of administrative action;
    - 2614 (v) lapsed; or
    - 2615 (vi) voluntarily surrendered; and
  - 2616 (b) the licensee:
    - 2617 (i) continues to act as a licensee; or
    - 2618 (ii) violates the terms of the license limitation.
- 2619 (7) A licensee under this chapter shall immediately report to the commissioner:
- 2620 (a) a revocation, suspension, or limitation of the person's license in another state, the  
2621 District of Columbia, or a territory of the United States;
  - 2622 (b) the imposition of a disciplinary sanction imposed on that person by another state,  
2623 the District of Columbia, or a territory of the United States; or
  - 2624 (c) a judgment or injunction entered against that person on the basis of conduct  
2625 involving:
    - 2626 (i) fraud;
    - 2627 (ii) deceit;
    - 2628 (iii) misrepresentation; or
    - 2629 (iv) a violation of an insurance law or rule.
- 2630 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a  
2631 license in lieu of administrative action may specify a time, not to exceed five years, within  
2632 which the former licensee may not apply for a new license.
- 2633 (b) If no time is specified in an order or agreement described in Subsection (8)(a), the  
2634 former licensee may not apply for a new license for five years from the day on which the order  
2635 or agreement is made without the express approval by the commissioner.

2636 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of  
2637 a license issued under this part if so ordered by a court.

2638 (10) The commissioner shall by rule prescribe the license renewal and reinstatement  
2639 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2640 Section 26. Section **31A-23a-402** is amended to read:

2641 **31A-23a-402. Unfair marketing practices -- Communication -- Unfair**  
2642 **discrimination -- Coercion or intimidation -- Restriction on choice.**

2643 (1) (a) (i) Any of the following may not make or cause to be made any communication  
2644 that contains false or misleading information, relating to an insurance product or contract, any  
2645 insurer, or any licensee under this title, including information that is false or misleading  
2646 because it is incomplete:

2647 (A) a person who is or should be licensed under this title;

2648 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

2649 (C) a person whose primary interest is as a competitor of a person licensed under this  
2650 title; and

2651 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

2652 (ii) As used in this Subsection (1), "false or misleading information" includes:

2653 (A) assuring the nonobligatory payment of future dividends or refunds of unused  
2654 premiums in any specific or approximate amounts, but reporting fully and accurately past  
2655 experience is not false or misleading information; and

2656 (B) with intent to deceive a person examining it:

2657 (I) filing a report;

2658 (II) making a false entry in a record; or

2659 (III) wilfully refraining from making a proper entry in a record.

2660 (iii) A licensee under this title may not:

2661 (A) use any business name, slogan, emblem, or related device that is misleading or  
2662 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee  
2663 already in business; or

2664 (B) use any name, advertisement, or other insurance promotional material that would  
2665 cause a reasonable person to mistakenly believe that a state or federal government agency,  
2666 [~~including Utah's small employer health insurance exchange known as "Avenue H,"~~] and the

2667 Children's Health Insurance Program created in Title 26, Chapter 40, Utah Children's Health  
2668 Insurance Act:

2669 (I) is responsible for the insurance sales activities of the person;

2670 (II) stands behind the credit of the person;

2671 (III) guarantees any returns on insurance products of or sold by the person; or

2672 (IV) is a source of payment of any insurance obligation of or sold by the person.

2673 (iv) A person who is not an insurer may not assume or use any name that deceptively  
2674 implies or suggests that person is an insurer.

2675 (v) A person other than persons licensed as health maintenance organizations under  
2676 Chapter 8, Health Maintenance Organizations and Limited Health Plans, may not use the term  
2677 "Health Maintenance Organization" or "HMO" in referring to itself.

2678 (b) A licensee's violation creates a rebuttable presumption that the violation was also  
2679 committed by the insurer if:

2680 (i) the licensee under this title distributes cards or documents, exhibits a sign, or  
2681 publishes an advertisement that violates Subsection (1)(a), with reference to a particular  
2682 insurer:

2683 (A) that the licensee represents; or

2684 (B) for whom the licensee processes claims; and

2685 (ii) the cards, documents, signs, or advertisements are supplied or approved by that  
2686 insurer.

2687 (2) (a) A title insurer, individual title insurance producer, or agency title insurance  
2688 producer or any officer or employee of the title insurer, individual title insurance producer, or  
2689 agency title insurance producer may not pay, allow, give, or offer to pay, allow, or give,  
2690 directly or indirectly, as an inducement to obtaining any title insurance business:

2691 (i) any rebate, reduction, or abatement of any rate or charge made incident to the  
2692 issuance of the title insurance;

2693 (ii) any special favor or advantage not generally available to others;

2694 (iii) any money or other consideration, except if approved under Section 31A-2-405; or

2695 (iv) material inducement.

2696 (b) "Charge made incident to the issuance of the title insurance" includes escrow  
2697 charges, and any other services that are prescribed in rule by the Title and Escrow Commission

2698 after consultation with the commissioner and subject to Section 31A-2-404.

2699 (c) An insured or any other person connected, directly or indirectly, with the  
2700 transaction may not knowingly receive or accept, directly or indirectly, any benefit referred to  
2701 in Subsection (2)(a), including:

2702 (i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices  
2703 and Licensing Act;

2704 (ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices  
2705 Act;

2706 (iii) a builder;

2707 (iv) an attorney; or

2708 (v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

2709 (3) (a) An insurer may not unfairly discriminate among policyholders by charging  
2710 different premiums or by offering different terms of coverage, except on the basis of  
2711 classifications related to the nature and the degree of the risk covered or the expenses involved.

2712 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons  
2713 insured under a group, blanket, or franchise policy, and the terms of those policies are not  
2714 unfairly discriminatory merely because they are more favorable than in similar individual  
2715 policies.

2716 (4) (a) This Subsection (4) applies to:

2717 (i) a person who is or should be licensed under this title;

2718 (ii) an employee of that licensee or person who should be licensed;

2719 (iii) a person whose primary interest is as a competitor of a person licensed under this  
2720 title; and

2721 (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

2722 (b) A person described in Subsection (4)(a) may not commit or enter into any  
2723 agreement to participate in any act of boycott, coercion, or intimidation that:

2724 (i) tends to produce:

2725 (A) an unreasonable restraint of the business of insurance; or

2726 (B) a monopoly in that business; or

2727 (ii) results in an applicant purchasing or replacing an insurance contract.

2728 (5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an

2729 insurer or licensee under this chapter, another person who is required to pay for insurance as a  
2730 condition for the conclusion of a contract or other transaction or for the exercise of any right  
2731 under a contract.

2732 (ii) A person requiring coverage may reserve the right to disapprove the insurer or the  
2733 coverage selected on reasonable grounds.

2734 (b) The form of corporate organization of an insurer authorized to do business in this  
2735 state is not a reasonable ground for disapproval, and the commissioner may by rule specify  
2736 additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from  
2737 declining an application for insurance.

2738 (6) A person may not make any charge other than insurance premiums and premium  
2739 financing charges for the protection of property or of a security interest in property, as a  
2740 condition for obtaining, renewing, or continuing the financing of a purchase of the property or  
2741 the lending of money on the security of an interest in the property.

2742 (7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of  
2743 agency to the principal on demand.

2744 (b) A licensee whose license is suspended, limited, or revoked under Section  
2745 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the  
2746 commissioner on demand.

2747 (8) (a) A person may not engage in an unfair method of competition or any other unfair  
2748 or deceptive act or practice in the business of insurance, as defined by the commissioner by  
2749 rule, after a finding that the method of competition, the act, or the practice:

2750 (i) is misleading;

2751 (ii) is deceptive;

2752 (iii) is unfairly discriminatory;

2753 (iv) provides an unfair inducement; or

2754 (v) unreasonably restrains competition.

2755 (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the  
2756 Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define an  
2757 unfair method of competition or unfair or deceptive act or practice after a finding that the  
2758 method of competition, the act, or the practice:

2759 (i) is misleading;

- 2760 (ii) is deceptive;  
 2761 (iii) is unfairly discriminatory;  
 2762 (iv) provides an unfair inducement; or  
 2763 (v) unreasonably restrains competition.

2764 Section 27. Section **31A-23a-411.1** is amended to read:

2765 **31A-23a-411.1. Person's liability if premium received is not forwarded to the**  
 2766 **insurer.**

2767 A person commits insurance fraud as described in Subsection 31A-31-103(1)~~(f)~~(g) if  
 2768 that person knowingly fails to forward to the insurer a premium:

2769 (1) received from one of the following in partial or total payment of the premium due  
 2770 from:

- 2771 (a) an applicant;  
 2772 (b) a policyholder; or  
 2773 (c) a certificate holder; or

2774 (2) collected from or on behalf of an insured employee under an insured employee  
 2775 benefit plan.

2776 Section 28. Section **31A-23a-415** is amended to read:

2777 **31A-23a-415. Assessment on agency title insurance producers or title insurers --**  
 2778 **Account created.**

2779 (1) For purposes of this section:

- 2780 (a) "Premium" is as defined in Subsection 59-9-101(3).  
 2781 (b) "Title insurer" means a person:

2782 (i) making any contract or policy of title insurance as:

- 2783 (A) insurer;  
 2784 (B) guarantor; or  
 2785 (C) surety;

2786 (ii) proposing to make any contract or policy of title insurance as:

- 2787 (A) insurer;  
 2788 (B) guarantor; or  
 2789 (C) surety; or

2790 (iii) transacting or proposing to transact any phase of title insurance, including:

- 2791 (A) soliciting;
- 2792 (B) negotiating preliminary to execution;
- 2793 (C) executing of a contract of title insurance;
- 2794 (D) insuring; and
- 2795 (E) transacting matters subsequent to the execution of the contract and arising out of
- 2796 the contract.
- 2797 (c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or
- 2798 personal property located in Utah, an owner of real or personal property, the holders of liens or
- 2799 encumbrances on that property, or others interested in the property against loss or damage
- 2800 suffered by reason of:
- 2801 (i) liens or encumbrances upon, defects in, or the unmarketability of the title to the
- 2802 property; or
- 2803 (ii) invalidity or unenforceability of any liens or encumbrances on the property.
- 2804 (2) (a) The commissioner may assess each title insurer, each individual title insurance
- 2805 producer who is not an employee of a title insurer or who is not designated by an agency title
- 2806 insurance producer, and each agency title insurance producer an annual assessment:
- 2807 (i) determined by the Title and Escrow Commission:
- 2808 (A) after consultation with the commissioner; and
- 2809 (B) in accordance with this Subsection (2); and
- 2810 (ii) to be used for the purposes described in Subsection (3).
- 2811 (b) An agency title insurance producer and individual title insurance producer who is
- 2812 not an employee of a title insurer or who is not designated by an agency title insurance
- 2813 producer shall be assessed up to:
- 2814 (i) \$250 for the first office in each county in which the agency title insurance producer
- 2815 or individual title insurance producer maintains an office; and
- 2816 (ii) \$150 for each additional office the agency title insurance producer or individual
- 2817 title insurance producer maintains in the county described in Subsection (2)(b)(i).
- 2818 (c) A title insurer shall be assessed up to:
- 2819 (i) \$250 for the first office in each county in which the title insurer maintains an office;
- 2820 (ii) \$150 for each additional office the title insurer maintains in the county described in
- 2821 Subsection (2)(c)(i); and

2822 (iii) an amount calculated by:  
2823 (A) aggregating the assessments imposed on:  
2824 (I) agency title insurance producers and individual title insurance producers under  
2825 Subsection (2)(b); and  
2826 (II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);  
2827 (B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total  
2828 costs and expenses determined under Subsection (2)(d); and  
2829 (C) multiplying:  
2830 (I) the amount calculated under Subsection (2)(c)(iii)(B); and  
2831 (II) the percentage of total premiums for title insurance on Utah risk that are premiums  
2832 of the title insurer.

2833 (d) Notwithstanding Section 31A-3-103 and subject to Section 31A-2-404, the Title  
2834 and Escrow Commission by rule shall establish the amount of costs and expenses described  
2835 under Subsection (3) that will be covered by the assessment, except the costs or expenses to be  
2836 covered by the assessment may not exceed \$100,000 annually.

2837 (e) (i) An individual licensed to practice law in Utah is exempt from the requirements  
2838 of this Subsection (2) if that person issues 12 or less policies during a 12-month period.

2839 (ii) In determining the number of policies issued by an individual licensed to practice  
2840 law in Utah for purposes of Subsection (2)(e)(i), if the individual issues a policy to more than  
2841 one party to the same closing, the individual is considered to have issued only one policy.

2842 (3) (a) Money received by the state under this section shall be deposited into the Title  
2843 Licensee Enforcement Restricted Account.

2844 (b) There is created in the General Fund a restricted account known as the "Title  
2845 Licensee Enforcement Restricted Account."

2846 (c) The Title Licensee Enforcement Restricted Account shall consist of the money  
2847 received by the state under this section.

2848 (d) The commissioner shall administer the Title Licensee Enforcement Restricted  
2849 Account. Subject to appropriations by the Legislature, the commissioner shall use the money  
2850 deposited into the Title Licensee Enforcement Restricted Account only to pay for a cost or  
2851 expense incurred by the department in the administration, investigation, and enforcement of  
2852 [~~this part and Part 5, Compensation of Producers and Consultants, related to:~~] laws governing

2853 individual title insurance producers, agency title insurance producers, or title insurers.

2854 [~~(i) the marketing of title insurance; and]~~

2855 [~~(ii) audits of agency title insurance producers.~~]

2856 (e) An appropriation from the Title Licensee Enforcement Restricted Account is  
2857 nonlapsing.

2858 (4) The assessment imposed by this section shall be in addition to any premium  
2859 assessment imposed under Subsection 59-9-101(3).

2860 Section 29. Section **31A-23b-401** is amended to read:

2861 **31A-23b-401. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**  
2862 **terminating a license -- Rulemaking for renewal or reinstatement.**

2863 (1) A license as a navigator under this chapter remains in force until:

2864 (a) revoked or suspended under Subsection (4);

2865 (b) surrendered to the commissioner and accepted by the commissioner in lieu of  
2866 administrative action;

2867 (c) the licensee dies or is adjudicated incompetent as defined under:

2868 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2869 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and  
2870 Minors;

2871 (d) lapsed under this section; or

2872 (e) voluntarily surrendered.

2873 (2) The following may be reinstated within one year after the day on which the license  
2874 is no longer in force:

2875 (a) a lapsed license; or

2876 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may  
2877 not be reinstated after the license period in which the license is voluntarily surrendered.

2878 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a  
2879 license, submission and acceptance of a voluntary surrender of a license does not prevent the  
2880 department from pursuing additional disciplinary or other action authorized under:

2881 (a) this title; or

2882 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah  
2883 Administrative Rulemaking Act.

2884 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an  
2885 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the  
2886 commissioner may:

- 2887 (i) revoke a license;
- 2888 (ii) suspend a license for a specified period of 12 months or less;
- 2889 (iii) limit a license in whole or in part;
- 2890 (iv) deny a license application;
- 2891 (v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or
- 2892 (vi) take a combination of actions under Subsections (4)(a)(i) through (iv) and  
2893 Subsection (4)(a)(v).

2894 (b) The commissioner may take an action described in Subsection (4)(a) if the  
2895 commissioner finds that the licensee:

- 2896 (i) is unqualified for a license under Section 31A-23b-204, 31A-23b-205, or  
2897 31A-23b-206;
- 2898 (ii) violated:
  - 2899 (A) an insurance statute;
  - 2900 (B) a rule that is valid under Subsection 31A-2-201(3); or
  - 2901 (C) an order that is valid under Subsection 31A-2-201(4);
- 2902 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other  
2903 delinquency proceedings in any state;
- 2904 (iv) failed to pay a final judgment rendered against the person in this state within 60  
2905 days after the day on which the judgment became final;
- 2906 (v) refused:
  - 2907 (A) to be examined; or
  - 2908 (B) to produce its accounts, records, and files for examination;
- 2909 (vi) had an officer who refused to:
  - 2910 (A) give information with respect to the navigator's affairs; or
  - 2911 (B) perform any other legal obligation as to an examination;
- 2912 (vii) provided information in the license application that is:
  - 2913 (A) incorrect;
  - 2914 (B) misleading;

- 2915 (C) incomplete; or
- 2916 (D) materially untrue;
- 2917 (viii) violated an insurance law, valid rule, or valid order of another regulatory agency
- 2918 in any jurisdiction;
- 2919 (ix) obtained or attempted to obtain a license through misrepresentation or fraud;
- 2920 (x) improperly withheld, misappropriated, or converted money or properties received
- 2921 in the course of doing insurance business;
- 2922 (xi) intentionally misrepresented the terms of an actual or proposed:
- 2923 (A) insurance contract;
- 2924 (B) application for insurance; or
- 2925 (C) application for public program;
- 2926 (xii) ~~is~~ has been convicted of:
- 2927 (A) a felony; or
- 2928 (B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;
- 2929 (xiii) admitted or is found to have committed an insurance unfair trade practice or
- 2930 fraud;
- 2931 (xiv) in the conduct of business in this state or elsewhere:
- 2932 (A) used fraudulent, coercive, or dishonest practices; or
- 2933 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 2934 (xv) has had an insurance license, navigator license, or [its equivalent,] other
- 2935 professional or occupational license or registration, or an equivalent of the same denied,
- 2936 suspended, [or] revoked [in another state, province, district, or territory], or surrendered to
- 2937 resolve an administrative action;
- 2938 (xvi) forged another's name to:
- 2939 (A) an application for insurance;
- 2940 (B) a document related to an insurance transaction;
- 2941 (C) a document related to an application for a public program; or
- 2942 (D) a document related to an application for premium subsidies;
- 2943 (xvii) improperly used notes or another reference material to complete an examination
- 2944 for a license;
- 2945 (xviii) knowingly accepted insurance business from an individual who is not licensed;

2946 (xix) failed to comply with an administrative or court order imposing a child support  
2947 obligation;

2948 (xx) failed to:

2949 (A) pay state income tax; or

2950 (B) comply with an administrative or court order directing payment of state income  
2951 tax;

2952 (xxi) ~~[violated or permitted others to violate]~~ has been convicted of violating the  
2953 federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and  
2954 ~~[therefore under]~~ has not obtained written consent to engage in the business of insurance or  
2955 participate in such business as required by 18 U.S.C. Sec. 1033 ~~[is prohibited from engaging in~~  
2956 ~~the business of insurance; or];~~

2957 (xxii) engaged in a method or practice in the conduct of business that endangered the  
2958 legitimate interests of customers and the public~~[-]; or~~

2959 (xxiii) has been convicted of any criminal felony involving dishonesty or breach of  
2960 trust and has not obtained written consent to engage in the business of insurance or participate  
2961 in such business as required by 18 U.S.C. Sec. 1033.

2962 (c) For purposes of this section, if a license is held by an agency, both the agency itself  
2963 and any individual designated under the license are considered to be the holders of the license.

2964 (d) If an individual designated under the agency license commits an act or fails to  
2965 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,  
2966 the commissioner may suspend, revoke, or limit the license of:

2967 (i) the individual;

2968 (ii) the agency, if the agency:

2969 (A) is reckless or negligent in its supervision of the individual; or

2970 (B) knowingly participates in the act or failure to act that is the ground for suspending,  
2971 revoking, or limiting the license; or

2972 (iii) (A) the individual; and

2973 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

2974 (5) A licensee under this chapter is subject to the penalties for acting as a licensee  
2975 without a license if:

2976 (a) the licensee's license is:

- 2977 (i) revoked;
- 2978 (ii) suspended;
- 2979 (iii) surrendered in lieu of administrative action;
- 2980 (iv) lapsed; or
- 2981 (v) voluntarily surrendered; and
- 2982 (b) the licensee:
- 2983 (i) continues to act as a licensee; or
- 2984 (ii) violates the terms of the license limitation.
- 2985 (6) A licensee under this chapter shall immediately report to the commissioner:
- 2986 (a) a revocation, suspension, or limitation of the person's license in another state, the
- 2987 District of Columbia, or a territory of the United States;
- 2988 (b) the imposition of a disciplinary sanction imposed on that person by another state,
- 2989 the District of Columbia, or a territory of the United States; or
- 2990 (c) a judgment or injunction entered against that person on the basis of conduct
- 2991 involving:
- 2992 (i) fraud;
- 2993 (ii) deceit;
- 2994 (iii) misrepresentation; or
- 2995 (iv) a violation of an insurance law or rule.
- 2996 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a
- 2997 license in lieu of administrative action may specify a time, not to exceed five years, within
- 2998 which the former licensee may not apply for a new license.
- 2999 (b) If no time is specified in an order or agreement described in Subsection (7)(a), the
- 3000 former licensee may not apply for a new license for five years from the day on which the order
- 3001 or agreement is made without the express approval of the commissioner.
- 3002 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
- 3003 a license issued under this chapter if so ordered by a court.
- 3004 (9) The commissioner shall by rule prescribe the license renewal and reinstatement
- 3005 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 3006 Section 30. Section **31A-25-208** is amended to read:
- 3007 **31A-25-208. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**

3008 **terminating a license -- Rulemaking for renewal and reinstatement.**

3009 (1) A license type issued under this chapter remains in force until:

3010 (a) revoked or suspended under Subsection (4);

3011 (b) surrendered to the commissioner and accepted by the commissioner in lieu of

3012 administrative action;

3013 (c) the licensee dies or is adjudicated incompetent as defined under:

3014 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

3015 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and

3016 Minors;

3017 (d) lapsed under Section 31A-25-210; or

3018 (e) voluntarily surrendered.

3019 (2) The following may be reinstated within one year after the day on which the license

3020 is no longer in force:

3021 (a) a lapsed license; or

3022 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may

3023 not be reinstated after the license period in which the license is voluntarily surrendered.

3024 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a

3025 license, submission and acceptance of a voluntary surrender of a license does not prevent the

3026 department from pursuing additional disciplinary or other action authorized under:

3027 (a) this title; or

3028 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah

3029 Administrative Rulemaking Act.

3030 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an

3031 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the

3032 commissioner may:

3033 (i) revoke a license;

3034 (ii) suspend a license for a specified period of 12 months or less;

3035 (iii) limit a license in whole or in part; or

3036 (iv) deny a license application.

3037 (b) The commissioner may take an action described in Subsection (4)(a) if the

3038 commissioner finds that the licensee:

- 3039 (i) is unqualified for a license under Section 31A-25-202, 31A-25-203, or 31A-25-204;
- 3040 (ii) has violated:
- 3041 (A) an insurance statute;
- 3042 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 3043 (C) an order that is valid under Subsection 31A-2-201(4);
- 3044 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
- 3045 delinquency proceedings in any state;
- 3046 (iv) fails to pay a final judgment rendered against the person in this state within 60
- 3047 days after the day on which the judgment became final;
- 3048 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 3049 admitted insurers;
- 3050 (vi) is affiliated with and under the same general management or interlocking
- 3051 directorate or ownership as another third party administrator that transacts business in this state
- 3052 without a license;
- 3053 (vii) refuses:
- 3054 (A) to be examined; or
- 3055 (B) to produce its accounts, records, and files for examination;
- 3056 (viii) has an officer who refuses to:
- 3057 (A) give information with respect to the third party administrator's affairs; or
- 3058 (B) perform any other legal obligation as to an examination;
- 3059 (ix) provides information in the license application that is:
- 3060 (A) incorrect;
- 3061 (B) misleading;
- 3062 (C) incomplete; or
- 3063 (D) materially untrue;
- 3064 (x) has violated an insurance law, valid rule, or valid order of another regulatory
- 3065 agency in any jurisdiction;
- 3066 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 3067 (xii) has improperly withheld, misappropriated, or converted money or properties
- 3068 received in the course of doing insurance business;
- 3069 (xiii) has intentionally misrepresented the terms of an actual or proposed:

- 3070 (A) insurance contract; or
- 3071 (B) application for insurance;
- 3072 (xiv) has been convicted of:
- 3073 (A) a felony; or
- 3074 (B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;
- 3075 (xv) has admitted or been found to have committed an insurance unfair trade practice
- 3076 or fraud;
- 3077 (xvi) in the conduct of business in this state or elsewhere has:
- 3078 (A) used fraudulent, coercive, or dishonest practices; or
- 3079 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 3080 (xvii) has had an insurance license or ~~[its equivalent,]~~ other professional or
- 3081 occupational license or registration, or an equivalent of the same, denied, suspended, ~~[or]~~
- 3082 revoked [in any other state, province, district, or territory], or surrendered to resolve an
- 3083 administrative action;
- 3084 (xviii) has forged another's name to:
- 3085 (A) an application for insurance; or
- 3086 (B) a document related to an insurance transaction;
- 3087 (xix) has improperly used notes or any other reference material to complete an
- 3088 examination for an insurance license;
- 3089 (xx) has knowingly accepted insurance business from an individual who is not
- 3090 licensed;
- 3091 (xxi) has failed to comply with an administrative or court order imposing a child
- 3092 support obligation;
- 3093 (xxii) has failed to:
- 3094 (A) pay state income tax; or
- 3095 (B) comply with an administrative or court order directing payment of state income
- 3096 tax;
- 3097 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
- 3098 Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
- 3099 prohibited from engaging in the business of insurance; or
- 3100 (xxiv) has engaged in methods and practices in the conduct of business that endanger

3101 the legitimate interests of customers and the public.

3102 (c) For purposes of this section, if a license is held by an agency, both the agency itself  
3103 and any individual designated under the license are considered to be the holders of the agency  
3104 license.

3105 (d) If an individual designated under the agency license commits an act or fails to  
3106 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,  
3107 the commissioner may suspend, revoke, or limit the license of:

3108 (i) the individual;

3109 (ii) the agency if the agency:

3110 (A) is reckless or negligent in its supervision of the individual; or

3111 (B) knowingly participated in the act or failure to act that is the ground for suspending,  
3112 revoking, or limiting the license; or

3113 (iii) (A) the individual; and

3114 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

3115 (5) A licensee under this chapter is subject to the penalties for acting as a licensee  
3116 without a license if:

3117 (a) the licensee's license is:

3118 (i) revoked;

3119 (ii) suspended;

3120 (iii) limited;

3121 (iv) surrendered in lieu of administrative action;

3122 (v) lapsed; or

3123 (vi) voluntarily surrendered; and

3124 (b) the licensee:

3125 (i) continues to act as a licensee; or

3126 (ii) violates the terms of the license limitation.

3127 (6) A licensee under this chapter shall immediately report to the commissioner:

3128 (a) a revocation, suspension, or limitation of the person's license in any other state, the  
3129 District of Columbia, or a territory of the United States;

3130 (b) the imposition of a disciplinary sanction imposed on that person by any other state,  
3131 the District of Columbia, or a territory of the United States; or

3132 (c) a judgment or injunction entered against the person on the basis of conduct  
3133 involving:

3134 (i) fraud;

3135 (ii) deceit;

3136 (iii) misrepresentation; or

3137 (iv) a violation of an insurance law or rule.

3138 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a  
3139 license in lieu of administrative action may specify a time, not to exceed five years, within  
3140 which the former licensee may not apply for a new license.

3141 (b) If no time is specified in the order or agreement described in Subsection (7)(a), the  
3142 former licensee may not apply for a new license for five years from the day on which the order  
3143 or agreement is made without the express approval of the commissioner.

3144 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of  
3145 a license issued under this part if so ordered by the court.

3146 (9) The commissioner shall by rule prescribe the license renewal and reinstatement  
3147 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3148 Section 31. Section **31A-26-213** is amended to read:

3149 **31A-26-213. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**  
3150 **terminating a license -- Forfeiture -- Rulemaking for renewal or reinstatement.**

3151 (1) A license type issued under this chapter remains in force until:

3152 (a) revoked or suspended under Subsection (5);

3153 (b) surrendered to the commissioner and accepted by the commissioner in lieu of  
3154 administrative action;

3155 (c) the licensee dies or is adjudicated incompetent as defined under:

3156 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

3157 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and  
3158 Minors;

3159 (d) lapsed under Section 31A-26-214.5; or

3160 (e) voluntarily surrendered.

3161 (2) The following may be reinstated within one year after the day on which the license  
3162 is no longer in force:

- 3163 (a) a lapsed license; or
- 3164 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may  
3165 not be reinstated after the license period in which it is voluntarily surrendered.
- 3166 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a  
3167 license, submission and acceptance of a voluntary surrender of a license does not prevent the  
3168 department from pursuing additional disciplinary or other action authorized under:
- 3169 (a) this title; or
- 3170 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah  
3171 Administrative Rulemaking Act.
- 3172 (4) A license classification issued under this chapter remains in force until:
- 3173 (a) the qualifications pertaining to a license classification are no longer met by the  
3174 licensee; or
- 3175 (b) the supporting license type:
- 3176 (i) is revoked or suspended under Subsection (5); or
- 3177 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of  
3178 administrative action.
- 3179 (5) (a) If the commissioner makes a finding under Subsection (5)(b) as part of an  
3180 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the  
3181 commissioner may:
- 3182 (i) revoke:
- 3183 (A) a license; or
- 3184 (B) a license classification;
- 3185 (ii) suspend for a specified period of 12 months or less:
- 3186 (A) a license; or
- 3187 (B) a license classification;
- 3188 (iii) limit in whole or in part:
- 3189 (A) a license; or
- 3190 (B) a license classification;
- 3191 (iv) deny a license application;
- 3192 (v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or
- 3193 (vi) take a combination of actions under Subsections (5)(a)(i) through (iv) and

3194 Subsection (5)(a)(v).

3195 (b) The commissioner may take an action described in Subsection (5)(a) if the  
3196 commissioner finds that the licensee:

3197 (i) is unqualified for a license or license classification under Section 31A-26-202,  
3198 31A-26-203, 31A-26-204, or 31A-26-205;

3199 (ii) has violated:

3200 (A) an insurance statute;

3201 (B) a rule that is valid under Subsection 31A-2-201(3); or

3202 (C) an order that is valid under Subsection 31A-2-201(4);

3203 (iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other  
3204 delinquency proceedings in any state;

3205 (iv) fails to pay a final judgment rendered against the person in this state within 60  
3206 days after the judgment became final;

3207 (v) fails to meet the same good faith obligations in claims settlement that is required of  
3208 admitted insurers;

3209 (vi) is affiliated with and under the same general management or interlocking  
3210 directorate or ownership as another insurance adjuster that transacts business in this state  
3211 without a license;

3212 (vii) refuses:

3213 (A) to be examined; or

3214 (B) to produce its accounts, records, and files for examination;

3215 (viii) has an officer who refuses to:

3216 (A) give information with respect to the insurance adjuster's affairs; or

3217 (B) perform any other legal obligation as to an examination;

3218 (ix) provides information in the license application that is:

3219 (A) incorrect;

3220 (B) misleading;

3221 (C) incomplete; or

3222 (D) materially untrue;

3223 (x) has violated an insurance law, valid rule, or valid order of another regulatory  
3224 agency in any jurisdiction;

- 3225 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 3226 (xii) has improperly withheld, misappropriated, or converted money or properties  
3227 received in the course of doing insurance business;
- 3228 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 3229 (A) insurance contract; or
- 3230 (B) application for insurance;
- 3231 (xiv) has been convicted of:
- 3232 (A) a felony; or
- 3233 (B) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty;
- 3234 (xv) has admitted or been found to have committed an insurance unfair trade practice  
3235 or fraud;
- 3236 (xvi) in the conduct of business in this state or elsewhere has:
- 3237 (A) used fraudulent, coercive, or dishonest practices; or
- 3238 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 3239 (xvii) has had an insurance license~~[-or its equivalent]~~ or other professional or  
3240 occupational license or registration, or equivalent, denied, suspended, ~~[or]~~ revoked ~~[in any~~  
3241 ~~other state, province, district, or territory]~~, or surrendered to resolve an administrative action;
- 3242 (xviii) has forged another's name to:
- 3243 (A) an application for insurance; or
- 3244 (B) a document related to an insurance transaction;
- 3245 (xix) has improperly used notes or any other reference material to complete an  
3246 examination for an insurance license;
- 3247 (xx) has knowingly accepted insurance business from an individual who is not  
3248 licensed;
- 3249 (xxi) has failed to comply with an administrative or court order imposing a child  
3250 support obligation;
- 3251 (xxii) has failed to:
- 3252 (A) pay state income tax; or
- 3253 (B) comply with an administrative or court order directing payment of state income  
3254 tax;
- 3255 (xxiii) has ~~[violated or permitted others to violate]~~ been convicted of a violation of the

3256 federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and  
3257 [~~therefore under 18 U.S.C. Sec. 1033 is prohibited from engaging in the business of insurance~~]  
3258 has not obtained written consent in accordance with 18 U.S.C. Sec. 1033 to engage in the  
3259 business of insurance or participate in such business; [or]

3260 (xxiv) has engaged in methods and practices in the conduct of business that endanger  
3261 the legitimate interests of customers and the public[-]; or

3262 (xxv) has been convicted of any criminal felony involving dishonesty or breach of trust  
3263 and has not obtained written consent in accordance with 18 U.S.C. Sec. 1033 to engage in the  
3264 business of insurance or participate in such business.

3265 (c) For purposes of this section, if a license is held by an agency, both the agency itself  
3266 and any individual designated under the license are considered to be the holders of the license.

3267 (d) If an individual designated under the agency license commits an act or fails to  
3268 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,  
3269 the commissioner may suspend, revoke, or limit the license of:

3270 (i) the individual;

3271 (ii) the agency, if the agency:

3272 (A) is reckless or negligent in its supervision of the individual; or

3273 (B) knowingly participated in the act or failure to act that is the ground for suspending,  
3274 revoking, or limiting the license; or

3275 (iii) (A) the individual; and

3276 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

3277 (6) A licensee under this chapter is subject to the penalties for conducting an insurance  
3278 business without a license if:

3279 (a) the licensee's license is:

3280 (i) revoked;

3281 (ii) suspended;

3282 (iii) limited;

3283 (iv) surrendered in lieu of administrative action;

3284 (v) lapsed; or

3285 (vi) voluntarily surrendered; and

3286 (b) the licensee:

- 3287 (i) continues to act as a licensee; or  
3288 (ii) violates the terms of the license limitation.
- 3289 (7) A licensee under this chapter shall immediately report to the commissioner:  
3290 (a) a revocation, suspension, or limitation of the person's license in any other state, the  
3291 District of Columbia, or a territory of the United States;  
3292 (b) the imposition of a disciplinary sanction imposed on that person by any other state,  
3293 the District of Columbia, or a territory of the United States; or  
3294 (c) a judgment or injunction entered against that person on the basis of conduct  
3295 involving:
- 3296 (i) fraud;  
3297 (ii) deceit;  
3298 (iii) misrepresentation; or  
3299 (iv) a violation of an insurance law or rule.
- 3300 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a  
3301 license in lieu of administrative action may specify a time not to exceed five years within  
3302 which the former licensee may not apply for a new license.
- 3303 (b) If no time is specified in the order or agreement described in Subsection (8)(a), the  
3304 former licensee may not apply for a new license for five years without the express approval of  
3305 the commissioner.
- 3306 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of  
3307 a license issued under this part if so ordered by a court.
- 3308 (10) The commissioner shall by rule prescribe the license renewal and reinstatement  
3309 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 3310 Section 32. Section **31A-27a-512.1** is enacted to read:
- 3311 **31A-27a-512.1. Indemnitor liability.**
- 3312 (1) (a) Except as otherwise provided in this chapter, the amount recoverable by the  
3313 receiver from an indemnitor may not be reduced as a result of a delinquency proceeding with a  
3314 finding of insolvency, regardless of any provision in the indemnity contract or other agreement.
- 3315 (b) To the extent an agreement, written or oral, conflicts with or is not in strict  
3316 compliance with this section, the agreement is unenforceable.
- 3317 (c) Except as expressly provided in this section, a person who is not the receiver,

3318 including a creditor or third-party beneficiary, does not have a right to indemnity proceeds from  
3319 any indemnitor of the insolvent insurer:

3320 (i) on the basis of any agreement, written or oral; or

3321 (ii) pursuant to an action or cause of action seeking any equitable or legal remedy.

3322 (d) This section applies to all the insurer's indemnity contracts.

3323 (2) The amount recoverable by the liquidator from an indemnitor is payable under one  
3324 or more contract of indemnity on the basis of:

3325 (a) proof of payment of the insured claim by an affected guaranty association, the  
3326 insurer, or the receiver, to the extent of payment; or

3327 (b) the allowance of the claim pursuant to:

3328 (i) Section 31A-27a-608;

3329 (ii) an order of the receivership court; or

3330 (iii) a plan of rehabilitation.

3331 (3) If an insurer takes credit for an indemnity contract in a filing or submission made to  
3332 the commissioner and the indemnity contract does not contain the provisions required with  
3333 respect to the obligations of indemnitor in the event of insolvency of the principal, the  
3334 indemnity contract is considered to contain the provisions required with respect to:

3335 (a) the obligations of indemnitors in the event of insolvency of the principal in order to  
3336 obtain indemnity; or

3337 (b) other applicable statutes.

3338 (4) An indemnity contract that under Subsection (3) is considered to contain certain  
3339 provisions, is considered to contain a provision that:

3340 (a) in the event of insolvency and the appointment of a receiver, the indemnity  
3341 obligation is payable to the indemnified insurer or to its receiver without diminution because of  
3342 the insolvency or because the receiver fails to pay all or a portion of the claim;

3343 (b) payment shall be made upon:

3344 (i) to the extent of the payment, proof of payment of the insured claim by an affected  
3345 guaranty association, the insurer, or the receiver; or

3346 (ii) the allowance of the claim pursuant to:

3347 (A) Section 31A-27a-608;

3348 (B) an order of the receivership court; or

3349 (C) a plan of rehabilitation; and

3350 (c) If an indemnitor does not pay the amount billed by the receiver within 60 days after  
3351 the mailing by the receiver, interest on the unpaid billed amount will begin to accrue at the  
3352 statutory legal rate described in Section 15-1-1, except that all or a portion of the interest may  
3353 be waived.

3354 (5) (a) The receiver shall notify in writing, in accordance with the terms of the  
3355 indemnity contract, each indemnitor obligated in relation to an indemnified claim or the  
3356 pendency of an indemnified claim against the indemnified company.

3357 (b) (i) The receiver's failure to give notice of a pending claim does not excuse the  
3358 obligation of the indemnitor, unless the indemnitor is prejudiced by the receiver's failure.

3359 (ii) If the indemnitor is prejudiced by the receiver's failure, indemnitor's obligation is  
3360 reduced only to the extent of the prejudice.

3361 (c) In a proceeding in which an indemnified claim is to be adjudicated, an indemnitor  
3362 may interpose, at its own expense, any one or more defenses that the indemnitor considers  
3363 available to the indemnified company or its receiver.

3364 (6) The entry of an order of rehabilitation or liquidation is not:

3365 (a) a breach or an anticipatory breach of an indemnity contract; or

3366 (b) grounds for retroactive revocation or retroactive cancellation of an indemnity  
3367 contract by the indemnifier.

3368 Section 33. Section **31A-30-103** is amended to read:

3369 **31A-30-103. Definitions.**

3370 As used in this chapter:

3371 (1) "Actuarial certification" means a written statement by a member of the American  
3372 Academy of Actuaries or other individual approved by the commissioner that a covered carrier  
3373 is in compliance with this chapter, based upon the examination of the covered carrier, including  
3374 review of the appropriate records and of the actuarial assumptions and methods used by the  
3375 covered carrier in establishing premium rates for applicable health benefit plans.

3376 (2) "Affiliate" or "affiliated" means a person who directly or indirectly through one or  
3377 more intermediaries, controls or is controlled by, or is under common control with, a specified  
3378 person.

3379 (3) "Base premium rate" means, for each class of business as to a rating period, the

3380 lowest premium rate charged or that could have been charged under a rating system for that  
3381 class of business by the covered carrier to covered insureds with similar case characteristics for  
3382 health benefit plans with the same or similar coverage.

3383 (4) (a) "Bona fide employer association" means an association of employers:

3384 (i) that meets the requirements of Subsection 31A-22-701(2)(b);

3385 (ii) in which the employers of the association, either directly or indirectly, exercise  
3386 control over the plan;

3387 (iii) that is organized:

3388 (A) based on a commonality of interest between the employers and their employees  
3389 that participate in the plan by some common economic or representation interest or genuine  
3390 organizational relationship unrelated to the provision of benefits; and

3391 (B) to act in the best interests of its employers to provide benefits for the employer's  
3392 employees and their spouses and dependents, and other benefits relating to employment; and

3393 (iv) whose association sponsored health plan complies with 45 C.F.R. 146.121.

3394 (b) The commissioner shall consider the following with regard to determining whether  
3395 an association of employers is a bona fide employer association under Subsection (4)(a):

3396 (i) how association members are solicited;

3397 (ii) who participates in the association;

3398 (iii) the process by which the association was formed;

3399 (iv) the purposes for which the association was formed, and what, if any, were the  
3400 pre-existing relationships of its members;

3401 (v) the powers, rights and privileges of employer members; and

3402 (vi) who actually controls and directs the activities and operations of the benefit  
3403 programs.

3404 (5) "Carrier" means a person that provides health insurance in this state including:

3405 (a) an insurance company;

3406 (b) a prepaid hospital or medical care plan;

3407 (c) a health maintenance organization;

3408 (d) a multiple employer welfare arrangement; and

3409 (e) another person providing a health insurance plan under this title.

3410 (6) (a) Except as provided in Subsection (6)(b), "case characteristics" means

3411 demographic or other objective characteristics of a covered insured that are considered by the  
3412 carrier in determining premium rates for the covered insured.

3413 (b) "Case characteristics" do not include:

3414 (i) duration of coverage since the policy was issued;

3415 (ii) claim experience; and

3416 (iii) health status.

3417 (7) "Class of business" means all or a separate grouping of covered insureds that is  
3418 permitted by the commissioner in accordance with Section 31A-30-105.

3419 (8) "Covered carrier" means an individual carrier or small employer carrier subject to  
3420 this chapter.

3421 (9) "Covered individual" means an individual who is covered under a health benefit  
3422 plan subject to this chapter.

3423 (10) "Covered insureds" means small employers and individuals who are issued a  
3424 health benefit plan that is subject to this chapter.

3425 (11) "Dependent" means an individual to the extent that the individual is defined to be  
3426 a dependent by:

3427 (a) the health benefit plan covering the covered individual; and

3428 (b) Chapter 22, Part 6, Accident and Health Insurance.

3429 (12) "Established geographic service area" means a geographical area approved by the  
3430 commissioner within which the carrier is authorized to provide coverage.

3431 (13) "Index rate" means, for each class of business as to a rating period for covered  
3432 insureds with similar case characteristics, the arithmetic average of the applicable base  
3433 premium rate and the corresponding highest premium rate.

3434 (14) "Individual carrier" means a carrier that provides coverage on an individual basis  
3435 through a health benefit plan regardless of whether:

3436 (a) coverage is offered through:

3437 (i) an association;

3438 (ii) a trust;

3439 (iii) a discretionary group; or

3440 (iv) other similar groups; or

3441 (b) the policy or contract is situated out-of-state.

3442 (15) "Individual conversion policy" means a conversion policy issued to:

3443 (a) an individual; or

3444 (b) an individual with a family.

3445 (16) "New business premium rate" means, for each class of business as to a rating  
3446 period, the lowest premium rate charged or offered, or that could have been charged or offered,  
3447 by the carrier to covered insureds with similar case characteristics for newly issued health  
3448 benefit plans with the same or similar coverage.

3449 (17) "Premium" means money paid by covered insureds and covered individuals as a  
3450 condition of receiving coverage from a covered carrier, including fees or other contributions  
3451 associated with the health benefit plan.

3452 (18) (a) "Rating period" means the calendar period for which premium rates  
3453 established by a covered carrier are assumed to be in effect, as determined by the carrier.

3454 (b) A covered carrier may not have:

3455 (i) more than one rating period in any calendar month; and

3456 (ii) no more than 12 rating periods in any calendar year.

3457 [~~(19) "Short-term limited duration insurance" means a health benefit product that:~~]

3458 [~~(a) is not renewable; and~~]

3459 [~~(b) has an expiration date specified in the contract that is less than 364 days after the~~  
3460 ~~date the plan became effective.]~~

3461 [~~(20)~~] (19) "Small employer carrier" means a carrier that provides health benefit plans  
3462 covering eligible employees of one or more small employers in this state, regardless of  
3463 whether:

3464 (a) coverage is offered through:

3465 (i) an association;

3466 (ii) a trust;

3467 (iii) a discretionary group; or

3468 (iv) other similar grouping; or

3469 (b) the policy or contract is situated out-of-state.

3470 Section 34. Section **31A-30-118** is amended to read:

3471 **31A-30-118. Patient Protection and Affordable Care Act -- State insurance**

3472 **mandates -- Cost of additional benefits.**

3473 (1) (a) The commissioner shall identify a new mandated benefit that is in excess of the  
3474 essential health benefits required by PPACA.

3475 (b) The state shall quantify the cost attributable to each additional mandated benefit  
3476 specified in Subsection (1)(a) based on a qualified health plan issuer's calculation of the cost  
3477 associated with the mandated benefit, which shall be:

3478 (i) calculated in accordance with generally accepted actuarial principles and  
3479 methodologies;

3480 (ii) conducted by a member of the American Academy of Actuaries; and

3481 (iii) reported to the commissioner and to the individual exchange operating in the state.

3482 (c) The commissioner may require a proponent of a new mandated benefit under  
3483 Subsection (1)(a) to provide the commissioner with a cost analysis conducted in accordance  
3484 with Subsection (1)(b). The commissioner may use the cost information provided under this  
3485 Subsection (1)(c) to establish estimates of the cost to the state under Subsection (2).

3486 (2) If the state is required to defray the cost of additional required benefits under the  
3487 provisions of 45 C.F.R. 155.170:

3488 (a) the state shall make the required payments:

3489 (i) in accordance with Subsection (3); and

3490 (ii) directly to the qualified health plan issuer in accordance with 45 C.F.R. 155.170;

3491 (b) an issuer of a qualified health plan that receives a payment under the provisions of  
3492 Subsection (1) and 45 C.F.R. 155.170 shall:

3493 (i) reduce the premium charged to the individual on whose behalf the issuer will be  
3494 paid under Subsection (1), in an amount equal to the amount of the payment under Subsection  
3495 (1); or

3496 (ii) notwithstanding Subsection 31A-23a-402.5(5), provide a premium rebate to an  
3497 individual on whose behalf the issuer received a payment under Subsection (1), in an amount  
3498 equal to the amount of the payment under Subsection (1); and

3499 (c) a premium rebate made under this section is not a prohibited inducement under  
3500 Section 31A-23a-402.5.

3501 (3) A payment required under 45 C.F.R. 155.170(c) shall:

3502 (a) unless otherwise required by PPACA, be based on a statewide average of the cost  
3503 of the additional benefit for all issuers who are entitled to payment under the provisions of 45

3504 C.F.R. 155.70; and

3505 (b) be submitted to an issuer through a process established and administered by:

3506 (i) the federal marketplace exchange for the state under PPACA for individual health  
3507 plans; or

3508 (ii) Avenue H small employer market exchange for qualified health plans offered on  
3509 the exchange.

3510 (4) The commissioner:

3511 (a) may adopt rules as necessary to administer the provisions of this section and 45

3512 C.F.R. 155.170; and

3513 (b) may not establish or implement the process for submitting the payments to an issuer  
3514 under Subsection (3)(b)(i) [~~unless the cost of establishing and implementing the process for~~  
3515 ~~submitting payments is paid for by the federal exchange marketplace].~~

3516 Section 35. Section **31A-31-103** is amended to read:

3517 **31A-31-103. Fraudulent insurance act.**

3518 (1) A person commits a fraudulent insurance act if that person with intent to deceive or  
3519 defraud:

3520 (a) knowingly presents or causes to be presented to an insurer any oral or written  
3521 statement or representation knowing that the statement or representation contains false,  
3522 incomplete, or misleading information concerning any fact material to an application for the  
3523 issuance or renewal of an insurance policy, certificate, or contract[?], as part of or in support of:

3524 (i) obtaining an insurance policy the insurer would otherwise not issue on the basis of  
3525 underwriting criteria applicable to the person;

3526 (ii) a scheme or artifice to avoid paying the premium that an insurer charges on the  
3527 basis of underwriting criteria applicable to the person; or

3528 (iii) a scheme or artifice to file an insurance claim for a loss that has already occurred;

3529 (b) [~~knowingly~~] presents or causes to be presented to an insurer any oral or written  
3530 statement or representation:

3531 (i) (A) as part of, or in support of, a claim for payment or other benefit pursuant to an  
3532 insurance policy, certificate, or contract; or

3533 (B) in connection with any civil claim asserted for recovery of damages for personal or  
3534 bodily injuries or property damage; and

- 3535 (ii) knowing that the statement or representation contains false, incomplete, or  
3536 misleading information concerning any fact or thing material to the claim;
- 3537 (c) knowingly accepts a benefit from the proceeds derived from a fraudulent insurance  
3538 act;
- 3539 (d) intentionally, knowingly, or recklessly devises a scheme or artifice to obtain fees  
3540 for anything of value, including professional services, by means of false or fraudulent  
3541 pretenses, representations, promises, or material omissions;
- 3542 ~~[(d)]~~ (e) knowingly assists, abets, solicits, or conspires with another to commit a  
3543 fraudulent insurance act;
- 3544 ~~[(e)]~~ (f) knowingly supplies false or fraudulent material information in any document  
3545 or statement required by the department;
- 3546 ~~[(f)]~~ (g) knowingly fails to forward a premium to an insurer in violation of Section  
3547 31A-23a-411.1; or
- 3548 ~~[(g)]~~ (h) knowingly employs, uses, or acts as a runner for the purpose of committing a  
3549 fraudulent insurance act.
- 3550 (2) A service provider commits a fraudulent insurance act if that service provider with  
3551 intent to deceive or defraud:
- 3552 (a) knowingly submits or causes to be submitted a bill or request for payment:
- 3553 (i) containing charges or costs for an item or service that are substantially in excess of  
3554 customary charges or costs for the item or service; or
- 3555 (ii) containing itemized or delineated fees for what would customarily be considered a  
3556 single procedure or service;
- 3557 (b) knowingly furnishes or causes to be furnished an item or service to a person:
- 3558 (i) substantially in excess of the needs of the person; or
- 3559 (ii) of a quality that fails to meet professionally recognized standards;
- 3560 (c) knowingly accepts a benefit from the proceeds derived from a fraudulent insurance  
3561 act; or
- 3562 (d) assists, abets, solicits, or conspires with another to commit a fraudulent insurance  
3563 act.
- 3564 (3) An insurer commits a fraudulent insurance act if that insurer with intent to deceive  
3565 or defraud:

3566 (a) knowingly withholds information or provides false or misleading information with  
 3567 respect to an application, coverage, benefits, or claims under a policy or certificate;

3568 (b) assists, abets, solicits, or conspires with another to commit a fraudulent insurance  
 3569 act;

3570 (c) knowingly accepts a benefit from the proceeds derived from a fraudulent insurance  
 3571 act; or

3572 (d) knowingly supplies false or fraudulent material information in any document or  
 3573 statement required by the department.

3574 (4) An insurer or service provider is not liable for any fraudulent insurance act  
 3575 committed by an employee without the authority of the insurer or service provider unless the  
 3576 insurer or service provider knew or should have known of the fraudulent insurance act.

3577 Section 36. Section **31A-31-107** is amended to read:

3578 **31A-31-107. Workers' compensation insurance fraud.**

3579 (1) In any action involving workers' compensation insurance, Section 34A-2-110  
 3580 supersedes this chapter.

3581 (2) Nothing in this section prohibits the department from investigating and pursuing  
 3582 civil or criminal penalties in accordance with Section 31A-31-109 and Title 34A, Utah Labor  
 3583 Code, for violations of Section 34A-2-110.

3584 Section 37. Section **31A-35-405** is amended to read:

3585 **31A-35-405. Issuance of license -- Denial -- Right of appeal.**

3586 (1) After the commissioner receives a complete application, fee, and any additional  
 3587 information in accordance with Section 31A-35-401, the board shall determine whether the  
 3588 applicant meets the requirements for issuance of a license under this chapter.

3589 ~~[(1) Upon a determination by the board that a person applying for a bail bond agency~~  
 3590 ~~license]~~ (2) (a) If the board determines that the applicant meets the requirements for issuance  
 3591 of a license under this chapter, the commissioner shall issue to that person a bail bond agency  
 3592 license.

3593 (b) If the board determines that the applicant does not meet the requirements for  
 3594 issuance of a license under this chapter, the commissioner shall make a final determination as  
 3595 to whether to issue a license under this chapter.

3596 ~~[(2)]~~ (3) (a) If the commissioner denies an application for a bail bond agency license

3597 under this chapter, the commissioner shall provide prompt written notification ~~[to the person~~  
3598 ~~applying for licensure:]~~ of the denial by commencing an informal adjudicative proceeding in  
3599 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

3600 (b) In a proceeding described in Subsection (3)(a), the commissioner shall hold a  
3601 hearing no later than 60 days after the day on which the commissioner receives a request for a  
3602 hearing.

3603 ~~[(i) stating the grounds for denial; and]~~

3604 ~~[(ii) notifying the person applying for licensure as a bail bond agency that:]~~

3605 ~~[(A) the person is entitled to a hearing if that person wants to contest the denial; and]~~

3606 ~~[(B) if the person wants a hearing, the person shall submit the request in writing to the~~  
3607 ~~commissioner within 15 days after the issuance of the denial:]~~

3608 ~~[(b) The department shall schedule a hearing described in Subsection (2)(a) no later~~  
3609 ~~than 60 days after the commissioner's receipt of the request:]~~

3610 ~~[(c) The department shall hear the appeal, and may:]~~

3611 ~~[(i) return the case to the commissioner for reconsideration;]~~

3612 ~~[(ii) modify the commissioner's decision; or]~~

3613 ~~[(iii) reverse the commissioner's decision.]~~

3614 ~~[(3) A decision under this section is subject to review under Title 63G, Chapter 4,~~  
3615 ~~Administrative Procedures Act.]~~

3616 Section 38. Section **31A-37-102** is amended to read:

3617 **31A-37-102. Definitions.**

3618 As used in this chapter:

3619 (1) (a) "Affiliated company" means a business entity that because of common  
3620 ownership, control, operation, or management is in the same corporate or limited liability  
3621 company system as:

3622 (i) a parent;

3623 (ii) an industrial insured; or

3624 (iii) a member organization.

3625 (b) Notwithstanding Subsection (1)(a), the commissioner may issue an order finding  
3626 that a business entity is not an affiliated company.

3627 (2) "Alien captive insurance company" means an insurer:

3628 (a) formed to write insurance business for a parent or affiliate of the insurer; and

3629 (b) licensed pursuant to the laws of an alien or foreign jurisdiction that imposes

3630 statutory or regulatory standards:

3631 (i) on a business entity transacting the business of insurance in the alien or foreign

3632 jurisdiction; and

3633 (ii) in a form acceptable to the commissioner.

3634 (3) "Applicant captive insurance company" means an entity that has submitted an

3635 application for a certificate of authority for a captive insurance company, unless the application

3636 has been denied or withdrawn.

3637 [~~(3)~~] (4) "Association" means a legal association of two or more persons that has been

3638 in continuous existence for at least one year if:

3639 (a) the association or its member organizations:

3640 (i) own, control, or hold with power to vote all of the outstanding voting securities of

3641 an association captive insurance company incorporated as a stock insurer; or

3642 (ii) have complete voting control over an association captive insurance company

3643 incorporated as a mutual insurer;

3644 (b) the association's member organizations collectively constitute all of the subscribers

3645 of an association captive insurance company formed as a reciprocal insurer; or

3646 (c) the association or its member organizations have complete voting control over an

3647 association captive insurance company formed as a limited liability company.

3648 [~~(4)~~] (5) "Association captive insurance company" means a business entity that insures

3649 risks of:

3650 (a) a member organization of the association;

3651 (b) an affiliate of a member organization of the association; and

3652 (c) the association.

3653 [~~(5)~~] (6) "Branch business" means an insurance business transacted by a branch captive

3654 insurance company in this state.

3655 [~~(6)~~] (7) "Branch captive insurance company" means an alien captive insurance

3656 company that has a certificate of authority from the commissioner to transact the business of

3657 insurance in this state through a captive insurance company that is domiciled outside of this

3658 state.

3659            ~~[(7)]~~ (8) "Branch operation" means a business operation of a branch captive insurance  
3660 company in this state.

3661            ~~[(8)]~~ (9) "Captive insurance company" means any of the following formed or holding a  
3662 certificate of authority under this chapter:

3663            (a) a branch captive insurance company;

3664            (b) a pure captive insurance company;

3665            (c) an association captive insurance company;

3666            (d) a sponsored captive insurance company;

3667            (e) an industrial insured captive insurance company, including an industrial insured  
3668 captive insurance company formed as a risk retention group captive in this state pursuant to the  
3669 provisions of the Federal Liability Risk Retention Act of 1986;

3670            (f) a special purpose captive insurance company; or

3671            (g) a special purpose financial captive insurance company.

3672            ~~[(9)]~~ (10) "Commissioner" means Utah's Insurance Commissioner or the  
3673 commissioner's designee.

3674            ~~[(10)]~~ (11) "Common ownership and control" means that two or more captive  
3675 insurance companies are owned or controlled by the same person or group of persons as  
3676 follows:

3677            (a) in the case of a captive insurance company that is a stock corporation, the direct or  
3678 indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;

3679            (b) in the case of a captive insurance company that is a mutual corporation, the direct  
3680 or indirect ownership of 80% or more of the surplus and the voting power of the mutual  
3681 corporation;

3682            (c) in the case of a captive insurance company that is a limited liability company, the  
3683 direct or indirect ownership by the same member or members of 80% or more of the  
3684 membership interests in the limited liability company; or

3685            (d) in the case of a sponsored captive insurance company, a protected cell is a separate  
3686 captive insurance company owned and controlled by the protected cell's participant, only if:

3687            (i) the participant is the only participant with respect to the protected cell; and

3688            (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored  
3689 captive insurance company through common ownership and control.

3690           ~~[(11)]~~ (12) "Consolidated debt to total capital ratio" means the ratio of Subsection  
3691 ~~[(11)]~~ (12)(a) to (b).

3692           (a) This Subsection ~~[(11)]~~ (12)(a) is an amount equal to the sum of all debts and hybrid  
3693 capital instruments including:

3694           (i) all borrowings from depository institutions;

3695           (ii) all senior debt;

3696           (iii) all subordinated debts;

3697           (iv) all trust preferred shares; and

3698           (v) all other hybrid capital instruments that are not included in the determination of  
3699 consolidated GAAP net worth issued and outstanding.

3700           (b) This Subsection ~~[(11)]~~ (12)(b) is an amount equal to the sum of:

3701           (i) total capital consisting of all debts and hybrid capital instruments as described in  
3702 Subsection ~~[(11)]~~ (12)(a); and

3703           (ii) shareholders' equity determined in accordance with generally accepted accounting  
3704 principles for reporting to the United States Securities and Exchange Commission.

3705           ~~[(12)]~~ (13) "Consolidated GAAP net worth" means the consolidated shareholders' or  
3706 members' equity determined in accordance with generally accepted accounting principles for  
3707 reporting to the United States Securities and Exchange Commission.

3708           ~~[(13)]~~ (14) "Controlled unaffiliated business" means a business entity:

3709           (a) (i) in the case of a pure captive insurance company, that is not in the corporate or  
3710 limited liability company system of a parent or the parent's affiliate; or

3711           (ii) in the case of an industrial insured captive insurance company, that is not in the  
3712 corporate or limited liability company system of an industrial insured or an affiliated company  
3713 of the industrial insured;

3714           (b) (i) in the case of a pure captive insurance company, that has a contractual  
3715 relationship with a parent or affiliate; or

3716           (ii) in the case of an industrial insured captive insurance company, that has a  
3717 contractual relationship with an industrial insured or an affiliated company of the industrial  
3718 insured; and

3719           (c) whose risks that are or will be insured by a pure captive insurance company, an  
3720 industrial insured captive insurance company, or both are managed in accordance with

- 3721 Subsection 31A-37-106(1)(j) by:
- 3722 (i) (A) a pure captive insurance company; or
- 3723 (B) an industrial insured captive insurance company; or
- 3724 (ii) a parent or affiliate of:
- 3725 (A) a pure captive insurance company; or
- 3726 (B) an industrial insured captive insurance company.
- 3727 [~~(14)~~ "Department" means the Insurance Department.]
- 3728 (15) "Establisher" means a person who establishes a business entity or a trust.
- 3729 (16) "Governing body" means the persons who hold the ultimate authority to direct and
- 3730 manage the affairs of an entity.
- 3731 [~~(15)~~] (17) "Industrial insured" means an insured:
- 3732 (a) that produces insurance:
- 3733 (i) by the services of a full-time employee acting as a risk manager or insurance
- 3734 manager; or
- 3735 (ii) using the services of a regularly and continuously qualified insurance consultant;
- 3736 (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;
- 3737 and
- 3738 (c) that has at least 25 full-time employees.
- 3739 [~~(16)~~] (18) "Industrial insured captive insurance company" means a business entity
- 3740 that:
- 3741 (a) insures risks of the industrial insureds that comprise the industrial insured group;
- 3742 and
- 3743 (b) may insure the risks of:
- 3744 (i) an affiliated company of an industrial insured; or
- 3745 (ii) a controlled unaffiliated business of:
- 3746 (A) an industrial insured; or
- 3747 (B) an affiliated company of an industrial insured.
- 3748 [~~(17)~~] (19) "Industrial insured group" means:
- 3749 (a) a group of industrial insureds that collectively:
- 3750 (i) own, control, or hold with power to vote all of the outstanding voting securities of
- 3751 an industrial insured captive insurance company incorporated or organized as a limited liability

3752 company as a stock insurer; or

3753 (ii) have complete voting control over an industrial insured captive insurance company

3754 incorporated or organized as a limited liability company as a mutual insurer;

3755 (b) a group that is:

3756 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Sec. 3901

3757 et seq., as amended, as a corporation or other limited liability association; and

3758 (ii) taxable under this title as a:

3759 (A) stock corporation; or

3760 (B) mutual insurer; or

3761 (c) a group that has complete voting control over an industrial captive insurance

3762 company formed as a limited liability company.

3763 ~~[(18)]~~ (20) "Member organization" means a person that belongs to an association.

3764 ~~[(19)]~~ (21) "Parent" means a person that directly or indirectly owns, controls, or holds

3765 with power to vote more than 50% of ~~[:] the outstanding securities of an organization.~~

3766 ~~[(a) the outstanding voting securities of a pure captive insurance company; or]~~

3767 ~~[(b) the pure captive insurance company, if the pure captive insurance company is~~

3768 ~~formed as a limited liability company.]~~

3769 ~~[(20)]~~ (22) "Participant" means an entity that is insured by a sponsored captive

3770 insurance company:

3771 (a) if the losses of the participant are limited through a participant contract to the assets

3772 of a protected cell; and

3773 (b)(i) the entity is permitted to be a participant under Section 31A-37-403; or

3774 (ii) the entity is an affiliate of an entity permitted to be a participant under Section

3775 31A-37-403.

3776 ~~[(21)]~~ (23) "Participant contract" means a contract by which a sponsored captive

3777 insurance company:

3778 (a) insures the risks of a participant; and

3779 (b) limits the losses of the participant to the assets of a protected cell.

3780 ~~[(22)]~~ (24) "Protected cell" means a separate account established and maintained by a

3781 sponsored captive insurance company for one participant.

3782 ~~[(23)]~~ (25) "Pure captive insurance company" means a business entity that insures risks

3783 of a parent or affiliate of the business entity.

3784 ~~[(24)]~~ (26) "Special purpose financial captive insurance company" is as defined in  
3785 Section 31A-37a-102.

3786 ~~[(25)]~~ (27) "Sponsor" means an entity that:

3787 (a) meets the requirements of Section 31A-37-402; and

3788 (b) is approved by the commissioner to:

3789 (i) provide all or part of the capital and surplus required by applicable law in an amount  
3790 of not less than \$350,000, which amount the commissioner may increase by order if the  
3791 commissioner considers it necessary; and

3792 (ii) organize and operate a sponsored captive insurance company.

3793 ~~[(26)]~~ (28) "Sponsored captive insurance company" means a captive insurance  
3794 company:

3795 (a) in which the minimum capital and surplus required by applicable law is provided by  
3796 one or more sponsors;

3797 (b) that is formed or holding a certificate of authority under this chapter;

3798 (c) that insures the risks of a separate participant through the contract; and

3799 (d) that segregates each participant's liability through one or more protected cells.

3800 ~~[(27)]~~ (29) "Treasury rates" means the United States Treasury strip asked yield as  
3801 published in the Wall Street Journal as of a balance sheet date.

3802 Section 39. Section **31A-37-103** is amended to read:

3803 **31A-37-103. Chapter exclusivity.**

3804 (1) Except as provided in Subsections (2) and (3) or otherwise provided in this chapter,  
3805 a provision of this title other than this chapter does not apply to a captive insurance company.

3806 (2) To the extent that a provision of the following does not contradict this chapter, the  
3807 provision applies to a captive insurance company that receives a certificate of authority under  
3808 this chapter:

3809 (a) Chapter 1, General Provisions;

3810 ~~[(a)]~~ (b) Chapter 2, Administration of the Insurance Laws;

3811 ~~[(b)]~~ (c) Chapter 4, Insurers in General;

3812 ~~[(c)]~~ (d) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

3813 ~~[(d)]~~ (e) Chapter 14, Foreign Insurers;

- 3814           ~~(e)~~ (f) Chapter 16, Insurance Holding Companies;
- 3815           ~~(f)~~ (g) Chapter 17, Determination of Financial Condition;
- 3816           ~~(g)~~ (h) Chapter 18, Investments;
- 3817           ~~(h)~~ (i) Chapter 19a, Utah Rate Regulation Act;
- 3818           ~~(i)~~ (j) Chapter 27, Delinquency Administrative Action Provisions; and
- 3819           ~~(j)~~ (k) Chapter 27a, Insurer Receivership Act.
- 3820           (3) In addition to this chapter, and subject to Section 31A-37a-103:
- 3821           (a) Chapter 37a, Special Purpose Financial Captive Insurance Company Act, applies to
- 3822 a special purpose financial captive insurance company; and
- 3823           (b) for purposes of a special purpose financial captive insurance company, a reference
- 3824 in this chapter to "this chapter" includes a reference to Chapter 37a, Special Purpose Financial
- 3825 Captive Insurance Company Act.
- 3826           (4) In addition to this chapter, an industrial group captive insurance company formed
- 3827 as a risk retention group captive is subject to Chapter 15, Part 2, Risk Retention Groups Act, to
- 3828 the extent that this chapter is silent regarding regulation of risk retention groups conducting
- 3829 business in the state.
- 3830           Section 40. Section **31A-37-106** is amended to read:
- 3831           **31A-37-106. Authority to make rules -- Authority to issue orders.**
- 3832           (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 3833 commissioner may adopt rules to:
- 3834           (a) determine circumstances under which a branch captive insurance company is not
- 3835 required to be a pure captive insurance company;
- 3836           (b) require a statement, document, or information that a captive insurance company
- 3837 shall provide to the commissioner to obtain a certificate of authority;
- 3838           (c) determine a factor a captive insurance company shall provide evidence of under
- 3839 Subsection ~~[31A-37-202]~~ 31A-37-201 (4)(b);
- 3840           (d) prescribe one or more capital requirements for a captive insurance company in
- 3841 addition to those required under Section 31A-37-204 based on the type, volume, and nature of
- 3842 insurance business transacted by the captive insurance company;
- 3843           (e) waive or modify a requirement for public notice and hearing for the following by a
- 3844 captive insurance company:

- 3845 (i) merger;
- 3846 (ii) consolidation;
- 3847 (iii) conversion;
- 3848 (iv) mutualization;
- 3849 (v) redomestication; or
- 3850 (vi) acquisition;
- 3851 (f) approve the use of one or more reliable methods of valuation and rating for:
- 3852 (i) an association captive insurance company;
- 3853 (ii) a sponsored captive insurance company; or
- 3854 (iii) an industrial insured group;
- 3855 (g) prohibit or limit an investment that threatens the solvency or liquidity of:
- 3856 (i) a pure captive insurance company; or
- 3857 (ii) an industrial insured captive insurance company;
- 3858 (h) determine the financial reports a sponsored captive insurance company shall
- 3859 annually file with the commissioner;
- 3860 (i) prescribe the required forms and reports under Section 31A-37-501; [~~and~~]
- 3861 (j) establish one or more standards to ensure that:
- 3862 (i) one of the following is able to exercise control of the risk management function of a
- 3863 controlled unaffiliated business to be insured by a pure captive insurance company:
- 3864 (A) a parent; or
- 3865 (B) an affiliated company of a parent; or
- 3866 (ii) one of the following is able to exercise control of the risk management function of
- 3867 a controlled unaffiliated business to be insured by an industrial insured captive insurance
- 3868 company:
- 3869 (A) an industrial insured; or
- 3870 (B) an affiliated company of the industrial insured[-]; and
- 3871 (k) establish requirements for obtaining, maintaining, and renewing a certificate of
- 3872 dormancy.
- 3873 (2) Notwithstanding Subsection (1)(j), until the commissioner adopts the rules
- 3874 authorized under Subsection (1)(j), the commissioner may by temporary order grant authority
- 3875 to insure risks to:

- 3876 (a) a pure captive insurance company; or  
3877 (b) an industrial insured captive insurance company.  
3878 (3) The commissioner may issue prohibitory, mandatory, and other orders relating to a  
3879 captive insurance company as necessary to enable the commissioner to secure compliance with  
3880 this chapter.

3881 Section 41. Section **31A-37-201** is amended to read:

3882 **31A-37-201. Certificate of authority.**

3883 (1) The commissioner may issue a certificate of authority to act as an insurer in this  
3884 state to a captive insurance company that meets the requirements of this chapter.

3885 (2) To conduct insurance business in this state, a captive insurance company shall:

3886 (a) obtain from the commissioner a certificate of authority authorizing it to conduct  
3887 insurance business in this state;

3888 (b) hold at least once each year in the state a meeting of the governing body;

3889 (c) maintain in this state:

3890 (i) the principal place of business of the captive insurance company; or

3891 (ii) in the case of a branch captive insurance company, the principal place of business  
3892 for the branch operations of the branch captive insurance company; and

3893 (d) except as provided in Subsection (3), appoint a resident registered agent to accept  
3894 service of process and to otherwise act on behalf of the captive insurance company in the state.

3895 (3) In the case of a captive insurance company formed as a corporation, if the  
3896 registered agent cannot with reasonable diligence be found at the registered office of the  
3897 captive insurance company, the commissioner is the agent of the captive insurance company  
3898 upon whom process, notice, or demand may be served.

3899 (4) (a) Before receiving a certificate of authority, an applicant captive insurance  
3900 company shall file with the commissioner:

3901 (i) a certified copy of the captive insurance company's organizational charter;

3902 (ii) a statement under oath of the captive insurance company's president and secretary  
3903 or their equivalents showing the captive insurance company's financial condition; and

3904 (iii) any other statement or document required by the commissioner under Section  
3905 31A-37-106.

3906 (b) In addition to the information required under Subsection (4)(a), an applicant captive

3907 insurance company shall file with the commissioner evidence of:

3908 (i) the amount and liquidity of the assets of the applicant captive insurance company  
3909 relative to the risks to be assumed by the applicant captive insurance company;

3910 (ii) the adequacy of the expertise, experience, and character of the person who will  
3911 manage the applicant captive insurance company;

3912 (iii) the overall soundness of the plan of operation of the applicant captive insurance  
3913 company;

3914 (iv) the adequacy of the loss prevention programs for the prospective insureds of the  
3915 applicant captive insurance company as the commissioner deems necessary; and

3916 (v) any other factor the commissioner:

3917 (A) adopts by rule under Section 31A-37-106; and

3918 (B) considers relevant in ascertaining whether the applicant captive insurance company  
3919 will be able to meet the policy obligations of the applicant captive insurance company.

3920 (c) In addition to the information required by Subsections (4)(a) and (b), an applicant  
3921 sponsored captive insurance company shall file with the commissioner:

3922 (i) a business plan at the level of detail required by the commissioner under Section  
3923 31A-37-106 demonstrating:

3924 (A) the manner in which the applicant sponsored captive insurance company will  
3925 account for the losses and expenses of each protected cell; and

3926 (B) the manner in which the applicant sponsored captive insurance company will report  
3927 to the commissioner the financial history, including losses and expenses, of each protected cell;

3928 (ii) a statement acknowledging that the applicant sponsored captive insurance company  
3929 will make all financial records of the applicant sponsored captive insurance company,  
3930 including records pertaining to a protected cell, available for inspection or examination by the  
3931 commissioner;

3932 (iii) a contract or sample contract between the applicant sponsored captive insurance  
3933 company and a participant; and

3934 (iv) evidence that expenses will be allocated to each protected cell in an equitable  
3935 manner.

3936 (5) (a) Information submitted pursuant to this section is classified as a protected record  
3937 under Title 63G, Chapter 2, Government Records Access and Management Act.

3938 (b) Notwithstanding Title 63G, Chapter 2, Government Records Access and  
3939 Management Act, the commissioner may disclose information submitted pursuant to this  
3940 section to a public official having jurisdiction over the regulation of insurance in another state  
3941 if:

3942 (i) the public official receiving the information agrees in writing to maintain the  
3943 confidentiality of the information; and

3944 (ii) the laws of the state in which the public official serves require the information to be  
3945 confidential.

3946 (c) This Subsection (5) does not apply to information provided by an industrial insured  
3947 captive insurance company insuring the risks of an industrial insured group.

3948 (6) (a) A captive insurance company shall pay to the department the following  
3949 nonrefundable fees established by the department under Sections 31A-3-103, 31A-3-304, and  
3950 63J-1-504:

3951 (i) a fee for examining, investigating, and processing, by a department employee, of an  
3952 application for a certificate of authority made by an applicant captive insurance company;

3953 (ii) a fee for obtaining a certificate of authority for the year the captive insurance  
3954 company is issued a certificate of authority by the department; and

3955 (iii) a certificate of authority renewal fee, assessed annually.

3956 (b) The commissioner may:

3957 (i) assign a department employee or retain legal, financial, or examination services  
3958 from outside the department to perform the services described in:

3959 (A) Subsection (6)(a); and

3960 (B) Section 31A-37-502; and

3961 (ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the  
3962 applicant captive insurance company.

3963 (7) If the commissioner is satisfied that the documents and statements filed by the  
3964 applicant captive insurance company comply with this chapter, the commissioner may grant a  
3965 certificate of authority authorizing the company to do insurance business in this state.

3966 (8) A certificate of authority granted under this section expires annually and shall be  
3967 renewed by July 1 of each year.

3968 Section 42. Section **31A-37-202** is repealed and reenacted to read:

3969 **31A-37-202. Permissive areas of insurance.**

3970 (1) Except as provided in Subsection (2), a captive insurance company may not directly  
 3971 insure a risk other than the risk of the captive insurance company's parent or affiliated  
 3972 organization.

3973 (2) The following may insure a risk of a controlled unaffiliated business:

3974 (a) an industrial insured captive insurance company;

3975 (b) a protected cell;

3976 (c) a pure captive insurance company; or

3977 (d) a sponsored captive insurance company.

3978 (3) To the extent allowed by a captive insurance company's organizational charter, a  
 3979 captive insurance company may provide any type of insurance described in this title, except:

3980 (a) workers' compensation insurance;

3981 (b) personal motor vehicle insurance;

3982 (c) homeowners' insurance; and

3983 (d) any component of the types of insurance described in Subsections (3)(a) through  
 3984 (c).

3985 (4) A captive insurance company may not provide coverage for:

3986 (a) a wager or gaming risk;

3987 (b) loss of an election;

3988 (c) the penal consequences of a crime; or

3989 (d) punitive damages.

3990 Section 43. Section **31A-37-203** is amended to read:

3991 **31A-37-203. Deceptive name prohibited.**

3992 (1) A captive insurance company may not adopt a name that is:

3993 ~~[(1)]~~ (a) the same as any other existing business name registered in this state;

3994 ~~[(2)]~~ (b) deceptively similar to any other existing business name registered in this state;

3995 or

3996 ~~[(3)]~~ (c) likely to be:

3997 ~~[(a)]~~ (i) confused with any other existing business name registered in this state; or

3998 ~~[(b)]~~ (ii) mistaken for any other existing business name registered in this state.

3999 (2) An applicant captive insurance company that submits an application for a certificate

4000 of authority on or after May 14, 2019, or a captive insurance company that changes its name on  
4001 or after May 14, 2019, shall include the work "insurance" or a term of equivalent meaning in its  
4002 name.

4003 Section 44. Section **31A-37-301** is amended to read:

4004 **31A-37-301. Formation.**

4005 (1) A [~~pure~~] captive insurance company [~~or a sponsored captive insurance company~~  
4006 ~~formed as a stock insurer shall be incorporated as a stock insurer with the capital of the pure~~  
4007 ~~captive insurance company or sponsored captive insurance company:]; other than a branch  
4008 captive insurance company, may be formed as a corporation or a limited liability company.~~

4009 [~~(a) divided into shares; and]~~

4010 [~~(b) held by the stockholders of the pure captive insurance company or sponsored~~  
4011 ~~captive insurance company:]~~

4012 [~~(2) A pure captive insurance company or a sponsored captive insurance company~~  
4013 ~~formed as a limited liability company shall be organized as a members' interest insurer with the~~  
4014 ~~capital of the pure captive insurance company or sponsored captive insurance company:]~~

4015 [~~(a) divided into interests; and]~~

4016 [~~(b) held by the members of the pure captive insurance company or sponsored captive~~  
4017 ~~insurance company:]~~

4018 [~~(3) An association captive insurance company or an industrial insured captive~~  
4019 ~~insurance company may be:]~~

4020 [~~(a) incorporated as a stock insurer with the capital of the association captive insurance~~  
4021 ~~company or industrial insured captive insurance company:]~~

4022 [~~(i) divided into shares; and]~~

4023 [~~(ii) held by the stockholders of the association captive insurance company or industrial~~  
4024 ~~insured captive insurance company:]~~

4025 [~~(b) incorporated as a mutual insurer without capital stock, with a governing body~~  
4026 ~~elected by the member organizations of the association captive insurance company or industrial~~  
4027 ~~insured captive insurance company; or]~~

4028 [~~(c) organized as a limited liability company with the capital of the association captive~~  
4029 ~~insurance company or industrial insured captive insurance company:]~~

4030 [~~(i) divided into interests; and]~~

4031 ~~[(ii) held by the members of the association captive insurance company or industrial~~  
4032 ~~insured captive insurance company.]~~

4033 (2) The capital of a captive insurance company shall be held by:

4034 (a) the interest holders of the captive insurance company; or

4035 (b) a governing body elected by:

4036 (i) the insureds;

4037 (ii) one or more affiliates; or

4038 (iii) a combination of the persons described in Subsections (2)(b)(i) and (ii).

4039 ~~[(4)]~~ (3) A captive insurance company formed [as a corporation may not have fewer  
4040 than three incorporators of whom one shall be a resident of this state] in the state shall have at  
4041 least one establisher who is an individual and at least one establisher who is an individual and a  
4042 resident of the state.

4043 ~~[(5) A captive insurance company formed as a limited liability company may not have~~  
4044 ~~fewer than three organizers of whom one shall be a resident of this state.]~~

4045 ~~[(6)(a) Before a captive insurance company formed as a corporation files the~~  
4046 ~~corporation's articles of incorporation with the Division of Corporations and Commercial~~  
4047 ~~Code, the incorporators shall obtain from the commissioner a certificate finding that the~~  
4048 ~~establishment and maintenance of the proposed corporation will promote the general good of~~  
4049 ~~the state.]~~

4050 (4) (a) An applicant captive insurance company's establishers shall obtain a certificate  
4051 of public good from the commissioner before filing its governing documents with the Division  
4052 of Corporations and Commercial Code.

4053 (b) In considering a request for a certificate under Subsection [(6)] (4)(a), the  
4054 commissioner shall consider:

4055 (i) the character, reputation, financial standing, and purposes of the [incorporators]  
4056 establishers;

4057 (ii) the character, reputation, financial responsibility, insurance experience, and  
4058 business qualifications of the principal officers [and directors] or members of the governing  
4059 body;

4060 (iii) any information in:

4061 (A) the application for a certificate of authority; or

4062 (B) the department's files; and

4063 (iv) other aspects that the commissioner considers advisable.

4064 ~~[(7)(a) Before a captive insurance company formed as a limited liability company files~~  
4065 ~~the limited liability company's certificate of organization with the Division of Corporations and~~  
4066 ~~Commercial Code, the limited liability company shall obtain from the commissioner a~~  
4067 ~~certificate finding that the establishment and maintenance of the proposed limited liability~~  
4068 ~~company will promote the general good of the state.]~~

4069 ~~[(b) In considering a request for a certificate under Subsection (7)(a), the commissioner~~  
4070 ~~shall consider:]~~

4071 ~~[(i) the character, reputation, financial standing, and purposes of the organizers;]~~

4072 ~~[(ii) the character, reputation, financial responsibility, insurance experience, and~~  
4073 ~~business qualifications of the managers;]~~

4074 ~~[(iii) any information in:]~~

4075 ~~[(A) the application for a certificate of authority; or]~~

4076 ~~[(B) the department's files; and]~~

4077 ~~[(iv) other aspects that the commissioner considers advisable.]~~

4078 ~~[(8)(a) A captive insurance company formed as a corporation shall file with the~~  
4079 ~~Division of Corporations and Commercial Code:]~~

4080 ~~[(i) the captive insurance company's articles of incorporation;]~~

4081 ~~[(ii) the certificate issued pursuant to Subsection (6); and]~~

4082 ~~[(iii) the fees required by the Division of Corporations and Commercial Code:]~~

4083 ~~[(b) The Division of Corporations and Commercial Code shall file both the articles of~~  
4084 ~~incorporation and the certificate described in Subsection (6) for a captive insurance company~~  
4085 ~~that complies with this section:]~~

4086 ~~[(9)(a) A captive insurance company formed as a limited liability company shall file~~  
4087 ~~with the Division of Corporations and Commercial Code:]~~

4088 ~~[(i) the captive insurance company's certificate of organization;]~~

4089 ~~[(ii) the certificate issued pursuant to Subsection (7); and]~~

4090 ~~[(iii) the fees required by the Division of Corporations and Commercial Code:]~~

4091 ~~[(b) The Division of Corporations and Commercial Code shall file both the certificate~~  
4092 ~~of organization and the certificate described in Subsection (7) for a captive insurance company~~

4093 that complies with this section.]

4094 ~~[(10)(a) The organizers of a captive insurance company formed as a reciprocal insurer~~  
4095 ~~shall obtain from the commissioner a certificate finding that the establishment and maintenance~~  
4096 ~~of the proposed association will promote the general good of the state.]~~

4097 ~~[(b) In considering a request for a certificate under Subsection (10)(a), the~~  
4098 ~~commissioner shall consider:]~~

4099 ~~[(i) the character, reputation, financial standing, and purposes of the incorporators;]~~

4100 ~~[(ii) the character, reputation, financial responsibility, insurance experience, and~~  
4101 ~~business qualifications of the officers and directors;]~~

4102 ~~[(iii) any information in:]~~

4103 ~~[(A) the application for a certificate of authority; or]~~

4104 ~~[(B) the department's files; and]~~

4105 ~~[(iv) other aspects that the commissioner considers advisable.]~~

4106 ~~[(11)(a) An alien captive insurance company that has received a certificate of authority~~  
4107 ~~to act as a branch captive insurance company shall obtain from the commissioner a certificate~~  
4108 ~~finding that:]~~

4109 ~~[(i) the home jurisdiction of the alien captive insurance company imposes statutory or~~  
4110 ~~regulatory standards in a form acceptable to the commissioner on companies transacting the~~  
4111 ~~business of insurance in that state; and]~~

4112 ~~[(ii) after considering the character, reputation, financial responsibility, insurance~~  
4113 ~~experience, and business qualifications of the officers and directors of the alien captive~~  
4114 ~~insurance company, and other relevant information, the establishment and maintenance of the~~  
4115 ~~branch operations will promote the general good of the state.]~~

4116 ~~[(b) After the commissioner issues a certificate under Subsection (11)(a) to an alien~~  
4117 ~~captive insurance company, the alien captive insurance company may register to do business in~~  
4118 ~~this state.]~~

4119 ~~[(12) At least one of the members of the board of directors of a captive insurance~~  
4120 ~~company formed as a corporation shall be a resident of this state.]~~

4121 ~~[(13) At least one of the managers of a limited liability company shall be a resident of~~  
4122 ~~this state.]~~

4123 (5) (a) Except as otherwise provided in this title, the governing body of a captive

4124 insurance company shall consist of at least three individuals as members, at least one of whom  
4125 is a resident of the state.

4126 (b) One-third of the members of the governing body of a captive insurance company  
4127 constitutes a quorum of the governing body.

4128 (6) A captive insurance company shall have at least three individuals as principal  
4129 officers with duties comparable to those of president, treasurer, and secretary.

4130 ~~[(14)] (7) (a) A captive insurance company formed as a corporation [under this chapter~~  
4131 ~~has the privileges and is subject to the provisions of the general corporation law as well as the~~  
4132 ~~applicable provisions contained in this chapter. (b) If] is subject to the provisions of Title 16,~~  
4133 ~~Chapter 10a, Utah Revised Business Corporation Act, and this chapter. If a conflict exists~~  
4134 ~~between a provision of [the general corporation law] Title 16, Chapter 10a, Utah Revised~~  
4135 ~~Business Corporation Act, and a provision of this chapter, this chapter [shall control] controls.~~

4136 (b) A captive insurance company formed as a limited liability company is subject to the  
4137 provisions of Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, and  
4138 this chapter. If a conflict exists between a provision of Title 48, Chapter 3a, Utah Revised  
4139 Uniform Limited Liability Company Act, and a provision of this chapter, this chapter controls.

4140 (c) Except as provided in Subsection ~~[(14)] (7)~~(d), the provisions of this title  
4141 ~~[pertaining to] that govern~~ a merger, consolidation, conversion, mutualization, and  
4142 redomestication apply ~~[in determining the procedures to be followed by]~~ to a captive insurance  
4143 company in carrying out any of the transactions described in those provisions.

4144 (d) Notwithstanding Subsection ~~[(14)] (7)~~(c), the commissioner may waive or modify  
4145 the requirements for public notice and hearing in accordance with rules adopted under Section  
4146 31A-37-106.

4147 (e) If a notice of public hearing is required, but no one requests a hearing, the  
4148 commissioner may cancel the public hearing.

4149 ~~[(15) (a) A captive insurance company formed as a limited liability company under this~~  
4150 ~~chapter has the privileges and is subject to Title 48, Chapter 3a, Utah Revised Uniform Limited~~  
4151 ~~Liability Company Act, as well as the applicable provisions in this chapter.]~~

4152 ~~[(b) If a conflict exists between a provision of the limited liability company law and a~~  
4153 ~~provision of this chapter, this chapter controls.]~~

4154 ~~[(c) The provisions of this title pertaining to a merger, consolidation, conversion,~~

4155 mutualization, and redomestication apply in determining the procedures to be followed by a  
4156 captive insurance company in carrying out any of the transactions described in those  
4157 provisions.]

4158 [(d) Notwithstanding Subsection (15)(c), the commissioner may waive or modify the  
4159 requirements for public notice and hearing in accordance with rules adopted under Section  
4160 31A-37-106.]

4161 [(e) If a notice of public hearing is required, but no one requests a hearing, the  
4162 commissioner may cancel the public hearing.]

4163 [(16)(a) The articles of incorporation or bylaws of a captive insurance company  
4164 formed as a corporation may not authorize a quorum of a board of directors to consist of fewer  
4165 than one-third of the fixed or prescribed number of directors as provided in Section  
4166 16-10a-824.]

4167 [(b) The certificate of organization of a captive insurance company formed as a limited  
4168 liability company may not authorize a quorum of a board of managers to consist of fewer than  
4169 one-third of the fixed or prescribed number of directors required in Section 16-10a-824.]

4170 Section 45. Section **31A-37-401** is amended to read:

4171 **31A-37-401. Sponsored captive insurance companies -- Formation.**

4172 (1) One or more sponsors may form a sponsored captive insurance company under this  
4173 chapter.

4174 (2) A sponsored captive insurance company formed under this chapter may establish  
4175 and maintain a protected cell to insure risks of a participant if:

4176 (a) the [~~shareholders~~] interest holders of a sponsored captive insurance company are  
4177 limited to:

4178 (i) the participants of the sponsored captive insurance company; and

4179 (ii) the sponsors of the sponsored captive insurance company;

4180 (b) each protected cell is accounted for separately on the books and records of the  
4181 sponsored cell captive insurance company to reflect:

4182 (i) the financial condition of each individual protected cell;

4183 (ii) the results of operations of each individual protected cell;

4184 (iii) the net income or loss of each individual protected cell;

4185 (iv) the dividends or other distributions to participants of each individual protected

4186 cell; and

4187 (v) other factors that may be:

4188 (A) provided in the participant contract; or

4189 (B) required by the commissioner;

4190 (c) the assets of a protected cell are not chargeable with liabilities arising out of any

4191 other insurance business the sponsored captive insurance company may conduct;

4192 (d) a sale, exchange, or other transfer of assets is not made by the sponsored captive

4193 insurance company between or among any of the protected cells of the sponsored captive

4194 insurance company without the consent of the protected cells;

4195 (e) a sale, exchange, transfer of assets, dividend, or distribution is not made from a

4196 protected cell to a sponsor or participant without the commissioner's approval, which may not

4197 be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or

4198 impairment with respect to a protected cell;

4199 (f) a sponsored captive insurance company annually files with the commissioner

4200 financial reports the commissioner requires under Section 31A-37-106, including accounting

4201 statements detailing the financial experience of each protected cell;

4202 (g) a sponsored captive insurance company notifies the commissioner in writing within

4203 10 business days of a protected cell that is insolvent or otherwise unable to meet the claim or

4204 expense obligations of the protected cell;

4205 (h) a participant contract does not take effect without the commissioner's prior written

4206 approval;

4207 (i) the addition of each new protected cell and withdrawal of a participant of any

4208 existing protected cell does not take effect without the commissioner's prior written approval;

4209 and

4210 (j) (i) a protected cell captive insurance company shall pay to the department the

4211 following nonrefundable fees established by the department under Sections 31A-3-103,

4212 31A-3-304, and 63J-1-504:

4213 (A) a fee for examining, investigating, and processing by a department employee of an

4214 application for a certificate of authority made by a protected cell captive insurance company;

4215 (B) a fee for obtaining a certificate of authority for the year the protected cell captive

4216 insurance company is issued a certificate of authority by the department; and

4217 (C) a certificate of authority renewal fee; and  
4218 (ii) a protected cell may be created by the sponsor or the sponsor may create a pooling  
4219 insurance arrangement to provide for pooling of risks to allow for risk distribution upon written  
4220 approval from every protected cell under the sponsor and written approval of the  
4221 commissioner.

4222 Section 46. Section **31A-37-501** is amended to read:

4223 **31A-37-501. Reports to commissioner.**

4224 (1) A captive insurance company is not required to make a report except those  
4225 provided in this chapter.

4226 (2) (a) Before March 1 of each year, a captive insurance company shall submit to the  
4227 commissioner a report of the financial condition of the captive insurance company, verified by  
4228 oath of [~~one of the~~] at least two individuals who are executive officers of the captive insurance  
4229 company.

4230 (b) Except as provided in Section 31A-37-204, a captive insurance company shall  
4231 report:

4232 (i) using generally accepted accounting principles, except to the extent that the  
4233 commissioner requires, approves, or accepts the use of a statutory accounting principle;

4234 (ii) using a useful or necessary modification or adaptation to an accounting principle  
4235 that is required, approved, or accepted by the commissioner for the type of insurance and kind  
4236 of insurer to be reported upon; and

4237 (iii) supplemental or additional information required by the commissioner.

4238 (c) Except as otherwise provided:

4239 (i) a licensed captive insurance company shall file the report required by Section  
4240 31A-4-113; and

4241 (ii) an industrial insured group shall comply with Section 31A-4-113.5.

4242 (3) (a) A pure captive insurance company may make written application to file the  
4243 required report on a fiscal year end that is consistent with the fiscal year of the parent company  
4244 of the pure captive insurance company.

4245 (b) If the commissioner grants an alternative reporting date for a pure captive insurance  
4246 company requested under Subsection (3)(a), the annual report is due 60 days after the fiscal  
4247 year end.

4248 (4) (a) Sixty days after the fiscal year end, a branch captive insurance company shall  
4249 file with the commissioner a copy of the reports and statements required to be filed under the  
4250 laws of the jurisdiction in which the alien captive insurance company is formed, verified by  
4251 oath by two of the alien captive insurance company's executive officers.

4252 (b) If the commissioner is satisfied that the annual report filed by the alien captive  
4253 insurance company in the jurisdiction in which the alien captive insurance company is formed  
4254 provides adequate information concerning the financial condition of the alien captive insurance  
4255 company, the commissioner may waive the requirement for completion of the annual statement  
4256 required for a captive insurance company under this section with respect to business written in  
4257 the alien or foreign jurisdiction.

4258 (c) A waiver by the commissioner under Subsection (4)(b):

4259 (i) shall be in writing; and

4260 (ii) is subject to public inspection.

4261 (5) Before March 1 of each year, a sponsored cell captive insurance company shall  
4262 submit to the commissioner a consolidated report of the financial condition of each individual  
4263 protected cell, including a financial statement for each protected cell.

4264 (6) (a) A captive insurance company shall notify the commissioner in writing if there  
4265 is:

4266 (i) a material change to the captive insurance company's most recently filed report of  
4267 financial condition; or

4268 (ii) an adverse material change in the financial condition of a captive insurance  
4269 company since the captive insurance company's most recently filed report of financial  
4270 condition.

4271 (b) A captive insurance company shall submit a notification described in this  
4272 subsection within 20 days after the day on which the captive insurance company learns of the  
4273 material change.

4274 Section 47. Section **31A-37-502** is amended to read:

4275 **31A-37-502. Examination.**

4276 (1) (a) As provided in this section, the commissioner, or a person appointed by the  
4277 commissioner, shall examine each captive insurance company in each five-year period.

4278 (b) The five-year period described in Subsection (1)(a) shall be determined on the basis

4279 of five full annual accounting periods of operation.

4280 (c) The examination is to be made as of:

4281 (i) December 31 of the full five-year period; or

4282 (ii) the last day of the month of an annual accounting period authorized for a captive  
4283 insurance company under this section.

4284 (d) In addition to an examination required under this Subsection (1), the commissioner,  
4285 or a person appointed by the commissioner may examine a captive insurance company  
4286 whenever the commissioner determines it to be prudent.

4287 (2) During an examination under this section the commissioner, or a person appointed  
4288 by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance  
4289 company to ascertain:

4290 (a) the financial condition of the captive insurance company;

4291 (b) the ability of the captive insurance company to fulfill the obligations of the captive  
4292 insurance company; and

4293 (c) whether the captive insurance company has complied with this chapter.

4294 (3) The commissioner may accept a comprehensive annual independent audit in lieu of  
4295 an examination:

4296 (a) of a scope satisfactory to the commissioner; and

4297 (b) performed by an independent auditor approved by the commissioner.

4298 (4) A captive insurance company that is inspected and examined under this section  
4299 shall pay, as provided in Subsection [~~31A-37-202~~] 31A-37-201(6)(b), the expenses and charges  
4300 of an inspection and examination.

4301 Section 48. Section **31A-37-701** is enacted to read:

4302 **Part 7. Dormancy.**

4303 **31A-37-701. Certificate of dormancy.**

4304 (1) In accordance with the provisions of this section, a captive insurance company,  
4305 other than a risk retention group may apply, without fee, to the commissioner for a certificate  
4306 of dormancy.

4307 (2) (a) A captive insurance company, other than a risk retention group, is eligible for a  
4308 certificate of dormancy if the captive insurance company:

4309 (i) has ceased transacting the business of insurance, including the issuance of insurance

4310 policies; and

4311 (ii) has no remaining insurance liabilities or obligations associated with insurance  
4312 business transactions or insurance policies.

4313 (b) For purposes of Subsection (2)(a)(ii), the commissioner may disregard liabilities or  
4314 obligations for which the captive insurance company has withheld sufficient funds or that are  
4315 otherwise sufficiently secured.

4316 (3) Except as provided in Subsection (5), a captive insurance company that holds a  
4317 certificate of dormancy is subject to all requirements of this chapter.

4318 (4) A captive insurance company that holds a certificate of dormancy:

4319 (a) shall possess and maintain unimpaired paid-in capital and unimpaired paid-in  
4320 surplus of:

4321 (i) in the case of a pure captive insurance company or a special purpose captive  
4322 insurance company, not less than \$25,000;

4323 (ii) in the case of an association captive insurance company, not less than \$75,000; or

4324 (iii) in the case of a sponsored captive insurance company, not less than \$100,000, of  
4325 which at least \$35,000 is provided by the sponsor; and

4326 (b) is not required to:

4327 (i) subject to Subsection (5), submit an annual audit or statement of actuarial opinion;

4328 (ii) maintain an active agreement with an independent auditor or actuary; or

4329 (iii) hold an annual meeting of the captive insurance company in the state.

4330 (5) The commissioner may require a captive insurance company that holds a certificate  
4331 of dormancy to submit an annual audit if the commissioner determines that there are concerns  
4332 regarding the captive insurance company's solvency or liquidity.

4333 (6) To maintain a certificate of dormancy and in lieu of a certificate of authority  
4334 renewal fee, no later than July 1 of each year, a captive insurance company shall pay an annual  
4335 dormancy renewal fee that is equal to 50% of the captive insurance's company's certificate of  
4336 authority renewal fee.

4337 (7) A captive insurance company may consecutively renew a certificate or dormancy  
4338 no more than five times.

4339 Section 49. Section **31A-37-702** is enacted to read:

4340 **31A-37-702. Cancelling a certificate of dormancy.**

4341 A captive insurance company may apply to cancel its certificate of dormancy by  
4342 complying with the procedures established in rule made by the commissioner in accordance  
4343 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

4344 Section 50. Section **31A-45-102** is amended to read:

4345 **31A-45-102. Definitions.**

4346 As used in this chapter:

4347 (1) "Covered benefit" or "benefit" means the health care services to which a covered  
4348 person is entitled under the terms of a health ~~[benefit]~~ care insurance plan offered by a  
4349 managed care organization.

4350 (2) "Managed care organization" means:

4351 (a) a managed care organization as that term is defined in Section 31A-1-301; and

4352 (b) a third party administrator as that term is defined in Section 31A-1-301.

4353 Section 51. Section **31A-45-303** is amended to read:

4354 **31A-45-303. Network provider contract provisions.**

4355 (1) Managed care organizations may provide for enrollees to receive services or  
4356 reimbursement ~~[under the health benefit plans]~~ in accordance with this section.

4357 (2) (a) Subject to restrictions under this section, a managed care organization may enter  
4358 into contracts with health care providers under which the health care providers agree to be a  
4359 network provider and supply services, at prices specified in the contracts, to enrollees.

4360 (b) A network provider contract shall require the network provider to accept the  
4361 specified payment in this Subsection (2) as payment in full, relinquishing the right to collect  
4362 amounts other than copayments, coinsurance, and deductibles from the enrollee.

4363 (c) The insurance contract may reward the enrollee for selection of network providers  
4364 by:

4365 (i) reducing premium rates;

4366 (ii) reducing deductibles;

4367 (iii) coinsurance;

4368 (iv) other copayments; or

4369 (v) any other reasonable manner.

4370 (3) (a) When reimbursing for services of health care providers that are not network  
4371 providers, the managed care organization may:

- 4372 (i) make direct payment to the enrollee; and
- 4373 (ii) impose a deductible on coverage of health care providers not under contract.
- 4374 (b) (i) Subsections (3)(b)(iii) and (c) apply to a managed care organization licensed
- 4375 under:
- 4376 (A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- 4377 (B) Chapter 7, Nonprofit Health Service Insurance Corporations; or
- 4378 (C) Chapter 14, Foreign Insurers; and
- 4379 (ii) Subsections (3)(b)(iii) and (c) and Subsection (6)(b) do not apply to a managed care
- 4380 organization licensed under Chapter 8, Health Maintenance Organizations and Limited Health
- 4381 Plans.
- 4382 (iii) When selecting health care providers with whom to contract under Subsection (2),
- 4383 a managed care organization described in Subsection (3)(b)(i) may not unfairly discriminate
- 4384 between classes of health care providers, but may discriminate within a class of health care
- 4385 providers, subject to Subsection (6).
- 4386 (c) For purposes of this section, unfair discrimination between classes of health care
- 4387 providers includes:
- 4388 (i) refusal to contract with class members in reasonable proportion to the number of
- 4389 insureds covered by the insurer and the expected demand for services from class members; and
- 4390 (ii) refusal to cover procedures for one class of providers that are:
- 4391 (A) commonly used by members of the class of health care providers for the treatment
- 4392 of illnesses, injuries, or conditions;
- 4393 (B) otherwise covered by the managed care organization; and
- 4394 (C) within the scope of practice of the class of health care providers.
- 4395 (4) Before the enrollee consents to the insurance contract, the managed care
- 4396 organization shall fully disclose to the enrollee that the managed care organization has entered
- 4397 into network provider contracts. The managed care organization shall provide sufficient detail
- 4398 on the network provider contracts to permit the enrollee to agree to the terms of the insurance
- 4399 contract. The managed care organization shall provide at least the following information:
- 4400 (a) a list of the health care providers under contract, and if requested their business
- 4401 locations and specialties;
- 4402 (b) a description of the insured benefits, including deductibles, coinsurance, or other

4403 copayments;

4404 (c) a description of the quality assurance program required under Subsection (5); and

4405 (d) a description of the adverse benefit determination procedures required under

4406 Section 31A-22-629.

4407 (5) (a) A managed care organization using network provider contracts shall maintain a  
4408 quality assurance program for assuring that the care provided by the network providers meets  
4409 prevailing standards in the state.

4410 (b) The commissioner in consultation with the executive director of the Department of  
4411 Health may designate qualified persons to perform an audit of the quality assurance program.  
4412 The auditors shall have full access to all records of the managed care organization and the  
4413 managed care organization's health care providers, including medical records of individual  
4414 patients.

4415 (c) The information contained in the medical records of individual patients shall  
4416 remain confidential. All information, interviews, reports, statements, memoranda, or other data  
4417 furnished for purposes of the audit and any findings or conclusions of the auditors are  
4418 privileged. The information is not subject to discovery, use, or receipt in evidence in any legal  
4419 proceeding except hearings before the commissioner concerning alleged violations of this  
4420 section.

4421 (6) (a) A health care provider or managed care organization may not discriminate  
4422 against a network provider for agreeing to a contract under Subsection (2).

4423 (b) (i) Subsections (6)(b) and (c) apply to a managed care organization that is described  
4424 in Subsection (3)(b)(i) and do not apply to a managed care organization described in  
4425 Subsection (3)(b)(ii).

4426 (ii) A health care provider licensed to treat an illness or injury within the scope of the  
4427 health care provider's practice, that is willing and able to meet the terms and conditions  
4428 established by the managed care organization for designation as a network provider, shall be  
4429 able to apply for and receive the designation as a network provider. Contract terms and  
4430 conditions may include reasonable limitations on the number of designated network providers  
4431 based upon substantial objective and economic grounds, or expected use of particular services  
4432 based upon prior provider-patient profiles.

4433 (c) Upon the written request of a provider excluded from a network provider contract,

4434 the commissioner may hold a hearing to determine if the managed care organization's exclusion  
4435 of the provider is based on the criteria set forth in Subsection (6)(b).

4436 (7) Nothing in this section is to be construed as to require a managed care organization  
4437 to offer a certain benefit or service as part of a health benefit plan.

4438 (8) Notwithstanding Subsection (2) or ~~[Subsection]~~ (6)(b), a managed care  
4439 organization described in Subsection (3)(b)(i) or third party administrator is not required to, but  
4440 may, enter into a contract with a licensed athletic trainer, licensed under Title 58, Chapter 40a,  
4441 Athletic Trainer Licensing Act.

4442 Section 52. Section **31A-45-401** is amended to read:

4443 **31A-45-401. Court ordered coverage for minor children who reside outside the**  
4444 **service area.**

4445 (1) (a) The requirements of Subsection (2) apply to a managed care organization if the  
4446 managed care organization ~~[health benefit plan]~~:

4447 (i) restricts coverage for nonemergency services to services provided by contracted  
4448 providers within the organization's service area; and

4449 (ii) does not offer a benefit that permits members the option of obtaining covered  
4450 services from a non-network provider.

4451 (b) The requirements of Subsection (2) do not apply to a managed care organization if:

4452 (i) the child ~~[that is]~~ is no longer the subject of a court or administrative support order  
4453 ~~[is over the age of 18 and is no longer enrolled in high school]~~; or

4454 (ii) a parent's employer offers the parent a choice to select health insurance coverage  
4455 that is not a managed care organization plan either at the time of the court or administrative  
4456 support order, or at a subsequent open enrollment period. This exemption from Subsection (2)  
4457 applies even if the parent ultimately chooses the managed care organization plan.

4458 (2) If a parent is required by a court or administrative support order to provide health  
4459 insurance coverage for a child who resides outside of a managed care organization's service  
4460 area, the managed care organization shall:

4461 (a) comply with the provisions of Section 31A-22-610.5;

4462 (b) allow the enrollee parent to enroll the child on the organization plan;

4463 (c) pay for otherwise covered health care services rendered to the child outside of the  
4464 service area by a non-network provider:

4465 (i) if the child, noncustodial parent, or custodial parent has complied with prior  
4466 authorization or utilization review otherwise required by the organization; and  
4467 (ii) in an amount equal to the dollar amount the organization pays under a noncapitated  
4468 arrangement for comparable services to a network provider in the same class of health care  
4469 providers as the provider who rendered the services; and

4470 (d) make payments on claims submitted in accordance with Subsection (2)(c) directly  
4471 to the provider, custodial parent, the child who obtained benefits, or state Medicaid agency.

4472 (3) (a) The parents of the child who is the subject of the court or administrative support  
4473 order are responsible for any charges billed by the provider in excess of those paid by the  
4474 organization.

4475 (b) This section does not affect any court or administrative order regarding the  
4476 responsibilities between the parents to pay any medical expenses not covered by accident and  
4477 health insurance or a managed care organization plan.

4478 (4) The commissioner shall adopt rules as necessary to administer this section and  
4479 Section 31A-22-610.5.

4480 Section 53. Section **34A-2-110** is amended to read:

4481 **34A-2-110. Workers' compensation insurance fraud -- Elements -- Penalties --**  
4482 **Notice.**

4483 (1) As used in this section:

4484 (a) "Corporation" has the same meaning as in Section 76-2-201.

4485 (b) "Intentionally" has the same meaning as in Section 76-2-103.

4486 (c) "Knowingly" has the same meaning as in Section 76-2-103.

4487 (d) "Person" has the same meaning as in Section 76-1-601.

4488 (e) "Recklessly" has the same meaning as in Section 76-2-103.

4489 (f) "Thing of value" means one or more of the following obtained under this chapter or  
4490 Chapter 3, Utah Occupational Disease Act:

4491 (i) workers' compensation insurance coverage;

4492 (ii) disability compensation;

4493 (iii) a medical benefit;

4494 (iv) a good;

4495 (v) a professional service;

- 4496 (vi) a fee for a professional service; or  
4497 (vii) anything of value.
- 4498 (2) (a) A person is guilty of workers' compensation insurance fraud if that person  
4499 intentionally, knowingly, or recklessly:
- 4500 (i) devises a scheme or artifice to do the following by means of a false or fraudulent  
4501 pretense, representation, promise, or material omission:
- 4502 (A) obtain a thing of value under this chapter or Chapter 3, Utah Occupational Disease  
4503 Act;
- 4504 (B) avoid paying the premium that an insurer charges, for an employee on the basis of  
4505 the underwriting criteria applicable to that employee, to obtain a thing of value under this  
4506 chapter or Chapter 3, Utah Occupational Disease Act; or
- 4507 (C) deprive an employee of a thing of value under this chapter or Chapter 3, Utah  
4508 Occupational Disease Act; and
- 4509 (ii) communicates or causes a communication with another in furtherance of the  
4510 scheme or artifice.
- 4511 (b) A violation of this Subsection (2) includes a scheme or artifice to:
- 4512 (i) make or cause to be made a false written or oral statement with the intent to obtain  
4513 insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act,  
4514 at a rate that does not reflect the risk, industry, employer, or class code actually covered by the  
4515 insurance coverage;
- 4516 (ii) form a business, reorganize a business, or change ownership in a business with the  
4517 intent to:
- 4518 (A) obtain insurance coverage as mandated by this chapter or Chapter 3, Utah  
4519 Occupational Disease Act, at a rate that does not reflect the risk, industry, employer, or class  
4520 code actually covered by the insurance coverage;
- 4521 (B) misclassify an employee as described in Subsection (2)(b)(iii); or
- 4522 (C) deprive an employee of workers' compensation coverage as required by Subsection  
4523 34A-2-103(8);
- 4524 (iii) misclassify an employee as one of the following so as to avoid the obligation to  
4525 obtain insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational  
4526 Disease Act:

- 4527 (A) an independent contractor;
- 4528 (B) a sole proprietor;
- 4529 (C) an owner;
- 4530 (D) a partner;
- 4531 (E) an officer; or
- 4532 (F) a member in a limited liability company;
- 4533 (iv) use a workers' compensation coverage waiver issued under Part 10, Workers'
- 4534 Compensation Coverage Waivers Act, to deprive an employee of workers' compensation
- 4535 coverage under this chapter or Chapter 3, Utah Occupational Disease Act; or
- 4536 (v) collect or make a claim for temporary disability compensation as provided in
- 4537 Section 34A-2-410 while working for gain.
- 4538 (3) (a) Workers' compensation insurance fraud under Subsection (2) is punishable in
- 4539 the manner prescribed in Subsection (3)(c).
- 4540 (b) A corporation or association is guilty of the offense of workers' compensation
- 4541 insurance fraud under the same conditions as those set forth in Section 76-2-204.
- 4542 (c) (i) In accordance with Subsection (3)(c)(ii), the determination of the degree of an
- 4543 offense under Subsection (2) shall be measured by the following on the basis of which creates
- 4544 the greatest penalty:
- 4545 (A) the total value of all property, money, or other things obtained or sought to be
- 4546 obtained by the scheme or artifice described in Subsection (2); or
- 4547 (B) the number of individuals not covered under this chapter or Chapter 3, Utah
- 4548 Occupational Disease Act, because of the scheme or artifice described in Subsection (2).
- 4549 (ii) A person is guilty of:
- 4550 (A) a class A misdemeanor:
- 4551 (I) if the value of the property, money, or other thing of value described in Subsection
- 4552 (3)(c)(i)(A) is less than \$1,000; or
- 4553 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
- 4554 individuals described in Subsection (3)(c)(i)(B) is less than five;
- 4555 (B) a third degree felony:
- 4556 (I) if the value of the property, money, or other thing of value described in Subsection
- 4557 (3)(c)(i)(A) is equal to or greater than \$1,000, but is less than \$5,000; or

4558 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of  
4559 individuals described in Subsection (3)(c)(i)(B) is equal to or greater than five, but is less than  
4560 50; and

4561 (C) a second degree felony:

4562 (I) if the value of the property, money, or other thing of value described in Subsection  
4563 (3)(c)(i)(A) is equal to or greater than \$5,000; or

4564 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of  
4565 individuals described in Subsection (3)(c)(i)(B) is equal to or greater than 50.

4566 (4) The following are not a necessary element of an offense described in Subsection  
4567 (2):

4568 (a) reliance on the part of a person;

4569 (b) the intent on the part of the perpetrator of an offense described in Subsection (2) to  
4570 permanently deprive a person of property, money, or anything of value; or

4571 (c) an insurer or self-insured employer giving written notice in accordance with  
4572 Subsection (5) that workers' compensation insurance fraud is a crime.

4573 (5) (a) An insurer or self-insured employer who, in connection with this chapter or  
4574 Chapter 3, Utah Occupational Disease Act, prints, reproduces, or furnishes a form described in  
4575 Subsection (5)(b) shall cause to be printed or displayed in comparative prominence with other  
4576 content on the form the statement: "Any person who knowingly presents false or fraudulent  
4577 underwriting information, files or causes to be filed a false or fraudulent claim for disability  
4578 compensation or medical benefits, or submits a false or fraudulent report or billing for health  
4579 care fees or other professional services is guilty of a crime and may be subject to fines and  
4580 confinement in state prison."

4581 (b) Subsection (5)(a) applies to a form upon which a person:

4582 (i) applies for insurance coverage;

4583 (ii) applies for a workers' compensation coverage waiver issued under Part 10,  
4584 Workers' Compensation Coverage Waivers Act;

4585 (iii) reports payroll;

4586 (iv) makes a claim by reason of accident, injury, death, disease, or other claimed loss;

4587 or

4588 (v) makes a report or gives notice to an insurer or self-insured employer.

4589 (c) An insurer or self-insured employer who issues a check, warrant, or other financial  
4590 instrument in payment of compensation issued under this chapter or Chapter 3, Utah  
4591 Occupational Disease Act, shall cause to be printed or displayed in comparative prominence  
4592 above the area for endorsement a statement substantially similar to the following: "Workers'  
4593 compensation insurance fraud is a crime punishable by Utah law."

4594 (d) This Subsection (5) applies only to the legal obligations of an insurer or a  
4595 self-insured employer.

4596 (e) A person who violates Subsection (2) is guilty of workers' compensation insurance  
4597 fraud, and the failure of an insurer or a self-insured employer to fully comply with this  
4598 Subsection (5) is not:

4599 (i) a defense to violating Subsection (2); or

4600 (ii) grounds for suppressing evidence.

4601 (6) In the absence of malice, a person, employer, insurer, or governmental entity that  
4602 reports a suspected fraudulent act relating to a workers' compensation insurance policy or claim  
4603 is not subject to civil liability for libel, slander, or another relevant cause of action.

4604 (7) (a) In an action involving workers' compensation, this section supersedes Title 31A,  
4605 Chapter 31, Insurance Fraud Act.

4606 (b) Nothing in this section prohibits the Insurance Department from investigating  
4607 violations of this section or from pursuing civil or criminal penalties for violations of this  
4608 section in accordance with Section 31A-31-109 and this title.

4609 Section 54. Section **63G-2-305** is amended to read:

4610 **63G-2-305. Protected records.**

4611 The following records are protected if properly classified by a governmental entity:

4612 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret  
4613 has provided the governmental entity with the information specified in Section 63G-2-309;

4614 (2) commercial information or nonindividual financial information obtained from a  
4615 person if:

4616 (a) disclosure of the information could reasonably be expected to result in unfair  
4617 competitive injury to the person submitting the information or would impair the ability of the  
4618 governmental entity to obtain necessary information in the future;

4619 (b) the person submitting the information has a greater interest in prohibiting access

4620 than the public in obtaining access; and

4621 (c) the person submitting the information has provided the governmental entity with  
4622 the information specified in Section 63G-2-309;

4623 (3) commercial or financial information acquired or prepared by a governmental entity  
4624 to the extent that disclosure would lead to financial speculations in currencies, securities, or  
4625 commodities that will interfere with a planned transaction by the governmental entity or cause  
4626 substantial financial injury to the governmental entity or state economy;

4627 (4) records, the disclosure of which could cause commercial injury to, or confer a  
4628 competitive advantage upon a potential or actual competitor of, a commercial project entity as  
4629 defined in Subsection 11-13-103(4);

4630 (5) test questions and answers to be used in future license, certification, registration,  
4631 employment, or academic examinations;

4632 (6) records, the disclosure of which would impair governmental procurement  
4633 proceedings or give an unfair advantage to any person proposing to enter into a contract or  
4634 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this  
4635 Subsection (6) does not restrict the right of a person to have access to, after the contract or  
4636 grant has been awarded and signed by all parties:

4637 (a) a bid, proposal, application, or other information submitted to or by a governmental  
4638 entity in response to:

4639 (i) an invitation for bids;

4640 (ii) a request for proposals;

4641 (iii) a request for quotes;

4642 (iv) a grant; or

4643 (v) other similar document; or

4644 (b) an unsolicited proposal, as defined in Section 63G-6a-712;

4645 (7) information submitted to or by a governmental entity in response to a request for  
4646 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict  
4647 the right of a person to have access to the information, after:

4648 (a) a contract directly relating to the subject of the request for information has been  
4649 awarded and signed by all parties; or

4650 (b) (i) a final determination is made not to enter into a contract that relates to the

4651 subject of the request for information; and

4652 (ii) at least two years have passed after the day on which the request for information is  
4653 issued;

4654 (8) records that would identify real property or the appraisal or estimated value of real  
4655 or personal property, including intellectual property, under consideration for public acquisition  
4656 before any rights to the property are acquired unless:

4657 (a) public interest in obtaining access to the information is greater than or equal to the  
4658 governmental entity's need to acquire the property on the best terms possible;

4659 (b) the information has already been disclosed to persons not employed by or under a  
4660 duty of confidentiality to the entity;

4661 (c) in the case of records that would identify property, potential sellers of the described  
4662 property have already learned of the governmental entity's plans to acquire the property;

4663 (d) in the case of records that would identify the appraisal or estimated value of  
4664 property, the potential sellers have already learned of the governmental entity's estimated value  
4665 of the property; or

4666 (e) the property under consideration for public acquisition is a single family residence  
4667 and the governmental entity seeking to acquire the property has initiated negotiations to acquire  
4668 the property as required under Section 78B-6-505;

4669 (9) records prepared in contemplation of sale, exchange, lease, rental, or other  
4670 compensated transaction of real or personal property including intellectual property, which, if  
4671 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value  
4672 of the subject property, unless:

4673 (a) the public interest in access is greater than or equal to the interests in restricting  
4674 access, including the governmental entity's interest in maximizing the financial benefit of the  
4675 transaction; or

4676 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of  
4677 the value of the subject property have already been disclosed to persons not employed by or  
4678 under a duty of confidentiality to the entity;

4679 (10) records created or maintained for civil, criminal, or administrative enforcement  
4680 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if  
4681 release of the records:

4682 (a) reasonably could be expected to interfere with investigations undertaken for  
4683 enforcement, discipline, licensing, certification, or registration purposes;

4684 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement  
4685 proceedings;

4686 (c) would create a danger of depriving a person of a right to a fair trial or impartial  
4687 hearing;

4688 (d) reasonably could be expected to disclose the identity of a source who is not  
4689 generally known outside of government and, in the case of a record compiled in the course of  
4690 an investigation, disclose information furnished by a source not generally known outside of  
4691 government if disclosure would compromise the source; or

4692 (e) reasonably could be expected to disclose investigative or audit techniques,  
4693 procedures, policies, or orders not generally known outside of government if disclosure would  
4694 interfere with enforcement or audit efforts;

4695 (11) records the disclosure of which would jeopardize the life or safety of an  
4696 individual;

4697 (12) records the disclosure of which would jeopardize the security of governmental  
4698 property, governmental programs, or governmental recordkeeping systems from damage, theft,  
4699 or other appropriation or use contrary to law or public policy;

4700 (13) records that, if disclosed, would jeopardize the security or safety of a correctional  
4701 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere  
4702 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

4703 (14) records that, if disclosed, would reveal recommendations made to the Board of  
4704 Pardons and Parole by an employee of or contractor for the Department of Corrections, the  
4705 Board of Pardons and Parole, or the Department of Human Services that are based on the  
4706 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's  
4707 jurisdiction;

4708 (15) records and audit workpapers that identify audit, collection, and operational  
4709 procedures and methods used by the State Tax Commission, if disclosure would interfere with  
4710 audits or collections;

4711 (16) records of a governmental audit agency relating to an ongoing or planned audit  
4712 until the final audit is released;

- 4713 (17) records that are subject to the attorney client privilege;
- 4714 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,  
4715 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,  
4716 quasi-judicial, or administrative proceeding;
- 4717 (19) (a) (i) personal files of a state legislator, including personal correspondence to or  
4718 from a member of the Legislature; and
- 4719 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of  
4720 legislative action or policy may not be classified as protected under this section; and
- 4721 (b) (i) an internal communication that is part of the deliberative process in connection  
4722 with the preparation of legislation between:
- 4723 (A) members of a legislative body;
- 4724 (B) a member of a legislative body and a member of the legislative body's staff; or
- 4725 (C) members of a legislative body's staff; and
- 4726 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of  
4727 legislative action or policy may not be classified as protected under this section;
- 4728 (20) (a) records in the custody or control of the Office of Legislative Research and  
4729 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
4730 legislation or contemplated course of action before the legislator has elected to support the  
4731 legislation or course of action, or made the legislation or course of action public; and
- 4732 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
4733 Office of Legislative Research and General Counsel is a public document unless a legislator  
4734 asks that the records requesting the legislation be maintained as protected records until such  
4735 time as the legislator elects to make the legislation or course of action public;
- 4736 (21) research requests from legislators to the Office of Legislative Research and  
4737 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
4738 in response to these requests;
- 4739 (22) drafts, unless otherwise classified as public;
- 4740 (23) records concerning a governmental entity's strategy about:
- 4741 (a) collective bargaining; or
- 4742 (b) imminent or pending litigation;
- 4743 (24) records of investigations of loss occurrences and analyses of loss occurrences that

4744 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the  
4745 Uninsured Employers' Fund, or similar divisions in other governmental entities;

4746 (25) records, other than personnel evaluations, that contain a personal recommendation  
4747 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
4748 personal privacy, or disclosure is not in the public interest;

4749 (26) records that reveal the location of historic, prehistoric, paleontological, or  
4750 biological resources that if known would jeopardize the security of those resources or of  
4751 valuable historic, scientific, educational, or cultural information;

4752 (27) records of independent state agencies if the disclosure of the records would  
4753 conflict with the fiduciary obligations of the agency;

4754 (28) records of an institution within the state system of higher education defined in  
4755 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,  
4756 retention decisions, and promotions, which could be properly discussed in a meeting closed in  
4757 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of  
4758 the final decisions about tenure, appointments, retention, promotions, or those students  
4759 admitted, may not be classified as protected under this section;

4760 (29) records of the governor's office, including budget recommendations, legislative  
4761 proposals, and policy statements, that if disclosed would reveal the governor's contemplated  
4762 policies or contemplated courses of action before the governor has implemented or rejected  
4763 those policies or courses of action or made them public;

4764 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,  
4765 revenue estimates, and fiscal notes of proposed legislation before issuance of the final  
4766 recommendations in these areas;

4767 (31) records provided by the United States or by a government entity outside the state  
4768 that are given to the governmental entity with a requirement that they be managed as protected  
4769 records if the providing entity certifies that the record would not be subject to public disclosure  
4770 if retained by it;

4771 (32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a  
4772 public body except as provided in Section 52-4-206;

4773 (33) records that would reveal the contents of settlement negotiations but not including  
4774 final settlements or empirical data to the extent that they are not otherwise exempt from

4775 disclosure;

4776 (34) memoranda prepared by staff and used in the decision-making process by an  
4777 administrative law judge, a member of the Board of Pardons and Parole, or a member of any  
4778 other body charged by law with performing a quasi-judicial function;

4779 (35) records that would reveal negotiations regarding assistance or incentives offered  
4780 by or requested from a governmental entity for the purpose of encouraging a person to expand  
4781 or locate a business in Utah, but only if disclosure would result in actual economic harm to the  
4782 person or place the governmental entity at a competitive disadvantage, but this section may not  
4783 be used to restrict access to a record evidencing a final contract;

4784 (36) materials to which access must be limited for purposes of securing or maintaining  
4785 the governmental entity's proprietary protection of intellectual property rights including patents,  
4786 copyrights, and trade secrets;

4787 (37) the name of a donor or a prospective donor to a governmental entity, including an  
4788 institution within the state system of higher education defined in Section 53B-1-102, and other  
4789 information concerning the donation that could reasonably be expected to reveal the identity of  
4790 the donor, provided that:

4791 (a) the donor requests anonymity in writing;

4792 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be  
4793 classified protected by the governmental entity under this Subsection (37); and

4794 (c) except for an institution within the state system of higher education defined in  
4795 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged  
4796 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority  
4797 over the donor, a member of the donor's immediate family, or any entity owned or controlled  
4798 by the donor or the donor's immediate family;

4799 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
4800 73-18-13;

4801 (39) a notification of workers' compensation insurance coverage described in Section  
4802 34A-2-205;

4803 (40) (a) the following records of an institution within the state system of higher  
4804 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,  
4805 or received by or on behalf of faculty, staff, employees, or students of the institution:

- 4806 (i) unpublished lecture notes;
- 4807 (ii) unpublished notes, data, and information:
- 4808 (A) relating to research; and
- 4809 (B) of:
- 4810 (I) the institution within the state system of higher education defined in Section
- 4811 53B-1-102; or
- 4812 (II) a sponsor of sponsored research;
- 4813 (iii) unpublished manuscripts;
- 4814 (iv) creative works in process;
- 4815 (v) scholarly correspondence; and
- 4816 (vi) confidential information contained in research proposals;
- 4817 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
- 4818 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 4819 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 4820 (41) (a) records in the custody or control of the Office of Legislative Auditor General
- 4821 that would reveal the name of a particular legislator who requests a legislative audit prior to the
- 4822 date that audit is completed and made public; and
- 4823 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 4824 Office of the Legislative Auditor General is a public document unless the legislator asks that
- 4825 the records in the custody or control of the Office of Legislative Auditor General that would
- 4826 reveal the name of a particular legislator who requests a legislative audit be maintained as
- 4827 protected records until the audit is completed and made public;
- 4828 (42) records that provide detail as to the location of an explosive, including a map or
- 4829 other document that indicates the location of:
- 4830 (a) a production facility; or
- 4831 (b) a magazine;
- 4832 (43) information:
- 4833 (a) contained in the statewide database of the Division of Aging and Adult Services
- 4834 created by Section 62A-3-311.1; or
- 4835 (b) received or maintained in relation to the Identity Theft Reporting Information
- 4836 System (IRIS) established under Section 67-5-22;

4837 (44) information contained in the Management Information System and Licensing  
4838 Information System described in Title 62A, Chapter 4a, Child and Family Services;

4839 (45) information regarding National Guard operations or activities in support of the  
4840 National Guard's federal mission;

4841 (46) records provided by any pawn or secondhand business to a law enforcement  
4842 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and  
4843 Secondhand Merchandise Transaction Information Act;

4844 (47) information regarding food security, risk, and vulnerability assessments performed  
4845 by the Department of Agriculture and Food;

4846 (48) except to the extent that the record is exempt from this chapter pursuant to Section  
4847 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or  
4848 prepared or maintained by the Division of Emergency Management, and the disclosure of  
4849 which would jeopardize:

4850 (a) the safety of the general public; or  
4851 (b) the security of:

4852 (i) governmental property;  
4853 (ii) governmental programs; or  
4854 (iii) the property of a private person who provides the Division of Emergency  
4855 Management information;

4856 (49) records of the Department of Agriculture and Food that provides for the  
4857 identification, tracing, or control of livestock diseases, including any program established under  
4858 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control  
4859 of Animal Disease;

4860 (50) as provided in Section 26-39-501:

4861 (a) information or records held by the Department of Health related to a complaint  
4862 regarding a child care program or residential child care which the department is unable to  
4863 substantiate; and  
4864 (b) information or records related to a complaint received by the Department of Health  
4865 from an anonymous complainant regarding a child care program or residential child care;

4866 (51) unless otherwise classified as public under Section 63G-2-301 and except as  
4867 provided under Section 41-1a-116, an individual's home address, home telephone number, or

4868 personal mobile phone number, if:

4869 (a) the individual is required to provide the information in order to comply with a law,  
4870 ordinance, rule, or order of a government entity; and

4871 (b) the subject of the record has a reasonable expectation that this information will be  
4872 kept confidential due to:

4873 (i) the nature of the law, ordinance, rule, or order; and

4874 (ii) the individual complying with the law, ordinance, rule, or order;

4875 (52) the name, home address, work addresses, and telephone numbers of an individual  
4876 that is engaged in, or that provides goods or services for, medical or scientific research that is:

4877 (a) conducted within the state system of higher education, as defined in Section  
4878 53B-1-102; and

4879 (b) conducted using animals;

4880 (53) in accordance with Section 78A-12-203, any record of the Judicial Performance  
4881 Evaluation Commission concerning an individual commissioner's vote on whether or not to  
4882 recommend that the voters retain a judge including information disclosed under Subsection  
4883 78A-12-203(5)(e);

4884 (54) information collected and a report prepared by the Judicial Performance  
4885 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter  
4886 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,  
4887 the information or report;

4888 (55) records contained in the Management Information System created in Section  
4889 62A-4a-1003;

4890 (56) records provided or received by the Public Lands Policy Coordinating Office in  
4891 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

4892 (57) information requested by and provided to the 911 Division under Section  
4893 63H-7a-302;

4894 (58) in accordance with Section 73-10-33:

4895 (a) a management plan for a water conveyance facility in the possession of the Division  
4896 of Water Resources or the Board of Water Resources; or

4897 (b) an outline of an emergency response plan in possession of the state or a county or  
4898 municipality;

4899 (59) the following records in the custody or control of the Office of Inspector General  
4900 of Medicaid Services, created in Section 63A-13-201:

4901 (a) records that would disclose information relating to allegations of personal  
4902 misconduct, gross mismanagement, or illegal activity of a person if the information or  
4903 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services  
4904 through other documents or evidence, and the records relating to the allegation are not relied  
4905 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation  
4906 report or final audit report;

4907 (b) records and audit workpapers to the extent they would disclose the identity of a  
4908 person who, during the course of an investigation or audit, communicated the existence of any  
4909 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or  
4910 regulation adopted under the laws of this state, a political subdivision of the state, or any  
4911 recognized entity of the United States, if the information was disclosed on the condition that  
4912 the identity of the person be protected;

4913 (c) before the time that an investigation or audit is completed and the final  
4914 investigation or final audit report is released, records or drafts circulated to a person who is not  
4915 an employee or head of a governmental entity for the person's response or information;

4916 (d) records that would disclose an outline or part of any investigation, audit survey  
4917 plan, or audit program; or

4918 (e) requests for an investigation or audit, if disclosure would risk circumvention of an  
4919 investigation or audit;

4920 (60) records that reveal methods used by the Office of Inspector General of Medicaid  
4921 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or  
4922 abuse;

4923 (61) information provided to the Department of Health or the Division of Occupational  
4924 and Professional Licensing under Subsection 58-68-304(3) or (4);

4925 (62) a record described in Section 63G-12-210;

4926 (63) captured plate data that is obtained through an automatic license plate reader  
4927 system used by a governmental entity as authorized in Section 41-6a-2003;

4928 (64) any record in the custody of the Utah Office for Victims of Crime relating to a  
4929 victim, including:

- 4930 (a) a victim's application or request for benefits;
- 4931 (b) a victim's receipt or denial of benefits; and
- 4932 (c) any administrative notes or records made or created for the purpose of, or used to,
- 4933 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim
- 4934 Reparations Fund;
- 4935 (65) an audio or video recording created by a body-worn camera, as that term is
- 4936 defined in Section 77-7a-103, that records sound or images inside a hospital or health care
- 4937 facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care
- 4938 provider, as that term is defined in Section 78B-3-403, or inside a human service program as
- 4939 that term is defined in Section 62A-2-101, except for recordings that:
- 4940 (a) depict the commission of an alleged crime;
- 4941 (b) record any encounter between a law enforcement officer and a person that results in
- 4942 death or bodily injury, or includes an instance when an officer fires a weapon;
- 4943 (c) record any encounter that is the subject of a complaint or a legal proceeding against
- 4944 a law enforcement officer or law enforcement agency;
- 4945 (d) contain an officer involved critical incident as defined in Subsection
- 4946 76-2-408(1)(d); or
- 4947 (e) have been requested for reclassification as a public record by a subject or
- 4948 authorized agent of a subject featured in the recording;
- 4949 (66) a record pertaining to the search process for a president of an institution of higher
- 4950 education described in Section 53B-2-102, except for application materials for a publicly
- 4951 announced finalist; and
- 4952 (67) an audio recording that is:
- 4953 (a) produced by an audio recording device that is used in conjunction with a device or
- 4954 piece of equipment designed or intended for resuscitating an individual or for treating an
- 4955 individual with a life-threatening condition;
- 4956 (b) produced during an emergency event when an individual employed to provide law
- 4957 enforcement, fire protection, paramedic, emergency medical, or other first responder service:
- 4958 (i) is responding to an individual needing resuscitation or with a life-threatening
- 4959 condition; and
- 4960 (ii) uses a device or piece of equipment designed or intended for resuscitating an

4961 individual or for treating an individual with a life-threatening condition; and  
4962 (c) intended and used for purposes of training emergency responders how to improve  
4963 their response to an emergency situation;

4964 (68) records submitted by or prepared in relation to an applicant seeking a  
4965 recommendation by the Research and General Counsel Subcommittee, the Budget  
4966 Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an  
4967 employment position with the Legislature;

4968 (69) work papers as defined in Section 31A-2-204; ~~and~~  
4969 (70) a record made available to Adult Protective Services or a law enforcement agency  
4970 under Section 61-1-206~~[-]; and~~

4971 (71) a record submitted to the Insurance Department in accordance with Section  
4972 31A-37-201.

4973 Section 55. Section **76-6-521** is amended to read:  
4974 **76-6-521. Fraudulent insurance act.**

4975 (1) A person commits a fraudulent insurance act if that person with intent to defraud:  
4976 (a) presents or causes to be presented any oral or written statement or representation  
4977 knowing that the statement or representation contains false or fraudulent information  
4978 concerning any fact material to an application for the issuance or renewal of an insurance  
4979 policy, certificate, or contract~~[-]~~, as part of or in support of:

4980 (i) obtaining an insurance policy the insurer would otherwise not issue on the basis of  
4981 underwriting criteria applicable to the person;

4982 (ii) a scheme or artifice to avoid paying the premium that an insurer charges on the  
4983 basis of underwriting criteria applicable to the person; or

4984 (iii) a scheme or artifice to file an insurance claim for a loss that has already occurred;

4985 (b) presents, or causes to be presented, any oral or written statement or representation:  
4986 (i) (A) as part of or in support of a claim for payment or other benefit pursuant to an  
4987 insurance policy, certificate, or contract; or  
4988 (B) in connection with any civil claim asserted for recovery of damages for personal or  
4989 bodily injuries or property damage; and  
4990 (ii) knowing that the statement or representation contains false, incomplete, or  
4991 fraudulent information concerning any fact or thing material to the claim;

4992 (c) knowingly accepts a benefit from proceeds derived from a fraudulent insurance act;  
 4993 (d) intentionally, knowingly, or recklessly devises a scheme or artifice to obtain fees  
 4994 for professional services, or anything of value by means of false or fraudulent pretenses,  
 4995 representations, promises, or material omissions;

4996 (e) knowingly employs, uses, or acts as a runner, as defined in Section 31A-31-102, for  
 4997 the purpose of committing a fraudulent insurance act;

4998 (f) knowingly assists, abets, solicits, or conspires with another to commit a fraudulent  
 4999 insurance act; [~~or~~]

5000 (g) knowingly supplies false or fraudulent material information in any document or  
 5001 statement required by the Department of Insurance[-]; or

5002 (h) knowingly fails to forward a premium to an insurer in violation of Section  
 5003 31A-23a-411.1.

5004 (2) (a) A violation of Subsection (1)(a) (i) is a class [~~B~~] A misdemeanor.

5005 (b) A violation of Subsections (1)(a)(ii) or (1)(b) through (1)(g) (h) is punishable as  
 5006 in the manner prescribed by Section 76-10-1801 for communication fraud for property of like  
 5007 value.

5008 (c) A violation of Subsection (1)(a)(iii):

5009 (i) is a class A misdemeanor if the value of the loss is less than \$1,500 or unable to be  
 5010 determined; or

5011 (ii) if the value of the loss is \$1,500 or more, is punishable as in the manner prescribed  
 5012 by Section 76-10-1801 for communication fraud for property of like value.

5013 (3) A corporation or association is guilty of the offense of insurance fraud under the  
 5014 same conditions as those set forth in Section 76-2-204.

5015 (4) The determination of the degree of any offense under Subsections (1)(a)(ii) and  
 5016 (1)(b) through [~~(1)(g)~~] (1)(h) shall be measured by the total value of all property, money, or  
 5017 other things obtained or sought to be obtained by the fraudulent insurance act or acts described  
 5018 in Subsections (1)(a)(ii) and (1)(b) through [~~(1)(g)~~] (1)(h).

5019 Section 56. **Repealer.**

5020 This bill repeals:

5021 Section **31A-16a-102, Definitions.**

5022 Section 57. **Effective date.**

- 5023            (1) Except as provided in Subsection (2), this bill takes effect on May 14, 2019.
- 5024            (2) The actions affecting the following sections take effect on January 1, 2020:
- 5025            (a) Section 31A-16b-101;
- 5026            (b) Section 31A-16b-102;
- 5027            (c) Section 31A-16b-103;
- 5028            (d) Section 31A-16b-104;
- 5029            (e) Section 31A-16b-105;
- 5030            (f) Section 31A-16b-106;
- 5031            (g) Section 31A-16b-107; and
- 5032            (h) Section 31A-16b-108.